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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~715~~. 283 111

THE GRAND LODGE OF THE STATE OF LOUISIANA F. AND A. MASONS, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED MAY 31, 1894.

(15,599.)

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1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

Petition. Filed April 18th, 1890.

GRAND LODGE OF THE STATE OF LOUISIANA F. & A. MASONS
vs.
CITY OF NEW ORLEANS.

No. 29919. Civil District Court, Division "B."

To the honorable the judges of the civil district court for the parish of Orleans:

The petition of the Grand Lodge of the State of Louisiana, duly incorporated by a perpetual charter by act of the legislature approved 18th March, 1816, respectfully represents that petitioner is the owner of a portion of ground and the buildings and improvements thereon situated at the corner of St. Charles and Perdido streets, in the square bounded by those streets and Carondelet and Union streets, known as the hall of the Grand Lodge of F. & A. Masons of the State of Louisiana, which property was purchased by petitioner from James Robb by act before H. B. Cenas, notary, on the 4th February, 1853, in which was incorporated a resolution of the said Grand Lodge, passed on the 31st of January, 1853, which in substance devotes the entire net revenues of said property, as soon as the same shall be paid for, to the relief of worthy distressed members of the order, their wives, children, and families, and as
2 a permanent charity fund, as will appear by a copy of said act, hereto annexed and made part of this petition, and which resolution of said Grand Lodge and the pledge in said act of purchase has been strictly adhered to and observed since the date of purchase to the present time and is still adhered to and observed.

That the letter and spirit of said resolution and pledge is in strict accord and consonance with the objects and principles of the institution, of which the said Grand Lodge in Louisiana is the superintending body or organization, as set forth in the preamble to said act of incorporation, "the principles of which are charity and universal benevolence," and "to the end, therefore, that charitable institutions may be promoted" said act of incorporation was enacted; and, further to promote the end and object of the institution of Freemasonry, which has always been the same as in substance above set forth, the legislature, by act No. 225, approved March 15th, 1855, and to enable petitioner to make its pledge as aforesaid more effectual, exempted said hall of the Grand Lodge from State and parish taxation so long as it was occupied *as* the Grand Lodge of F. & A. Masons, and which exemption, in consideration of the principles and objects of the institution and the devotion of the revenues of said property as set forth in the act of purchase and as hereinbefore set up, became a contract between the State of Louisiana and the

said Grand Lodge, your petitioner, so long as the said property should be the property of the Grand Lodge and be occupied by it, it being understood that the revenues arising from said property should not be diverted from their destination and that the principles of the institution of Freemasonry remain unchanged; and petitioner alleges that the principles and objects of Freemasonry are still unchanged and that the net revenues arising from said property have not been diverted.

3 Petitioner further represents that the board of assessors of the parish of Orleans, notwithstanding said exemption, have assessed said property as liable to taxation at $60,000 for the years 1888, 1889, and 1890, and that the city of New Orleans are threatening to enforce the collection of the tax for the years 1888 & 1889, and have advertised said property for sale for the taxes claimed for the year 1888, and will sell the same unless restrained by an injunction, and thereby work an irreparable injury to petitioner.

That said city has refused to cancel said illegal assessment and continues to levy taxes upon said property, though amicably petitioned thereto, and notwithstanding judgments of court unappealed from and long since final have declared said property exempt from taxation, and which judgments have been acquiesced in by the State; that the law under color of which the said city claims the right to levy and collect said taxes impairs the obligation of a contract and is in violation of the constitution of this State and of section 10 of article one of the Constitution of the United States, and is null and void.

Wherefore the premises, annexed affidavit, and bond being considered, petitioner prays for a writ of injunction against the city of New Orleans, enjoining said city and any of its officers from proceeding in the sale of said property for the taxes of 1888, 1889, 1890, as against the Grand Lodge, of the property at the corner of St. Charles and Perdido streets, in square 222, and that the said injunction be made perpetual, and the assessments and levy of taxes thereon be declared null and void, and that said property be decreed exempt from taxation so long as it shall be the property of petitioner, the Grand Lodge; and petitioner further prays for costs and all general and equitable relief.

(Signed) J. Q. A. FELLOWS, *Att'y.*

4 *Affidavit.*

Personally appeared the undersigned, who, being duly sworn, says that he is the present presiding officer and head of the Grand Lodge, petitioner herein; that all the allegations and statement of facts in the foregoing petition are true, and that an injunction is necessary.

(Signed) GEO. H. PACKWOOD.

Subscribed and sworn to before me, a duly qualified notary public in and for the parish of Orleans, State of Louisiana, this 18th day of April, 1890.

(Signed) J. D. TAYLOR, *Not. Pub.*

Order.

Let a writ of injunction issue as herein prayed for and according to law upon petitioner furnishing bond in the sum of two hundred dollars, conditioned as the law requires.

New Orleans, April 18th, 1890.

(Signed) N. H. RIGHTOR, *Judge.*

Bond. Filed April 18th, 1890.

STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Know all men by these presents that we, The Grand Lodge of Louisiana F. & A. Masons, as principal, and Joseph D. Taylor, as security, are held and firmly bound unto the City of New Orleans, its executors, administrators, and assigns, in the sum of two hundred dollars; for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns.

The condition of the above obligation is such that whereas the above-bound The Grand Lodge has this day sued out before the civil district court for the parish and State aforesaid a writ of injunction in the cause entitled The Grand Lodge F. and A. Masons *vs.* The City of New Orleans, No. — of the docket—this bond is to cover and secure damages to said city of New Orleans, if any happen, in consequence of said writ:

Now, therefore, if it shall appear that said writ of injunction legally obtained said writ, then this obligation to be void; otherwise to remain in full force and virtue.

New Orleans, La., April 18th, 1890.

(Signed) GEO. H. PACKWOOD,
Acting Grand Master, F. & A. M. [SEAL.]
J. D. TAYLOR. [SEAL.]

Signed and delivered in the presence of—
—— ——.

Copy of Act Annexed to and Made Part of Petition. Filed April 18th, 1890.

4TH FEBRUARY, 1853.

Sale of property by James Robb to the Grand Lodge of the State of Louisiana.

STATE OF LOUISIANA, }
City of New Orleans. }

Be it known that this day before me, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared James Robb, of this city, who declared that for the consideration and on the terms and conditions hereinafter expressed he does by these presents grant, bargain, sell, convey, transfer, assign,

and set over, with all legal warranties, unto the "Grand Lodge of
the State of Louisiana," a corporate body duly constituted by
6 an act of the legislature of this State entitled "An act incor-
porating the Grand Lodge of the State of Louisiana, and for other purposes," approved on the eighteenth day of March, 1816, the said corporation being herein represented by Harry R. W. Hill, the grand master thereof (by *a* virtue of a resolution duly adopted at a meeting of the said Grand Lodge held on the twenty-seventh day of January last, a certified copy whereof is hereunto annexed for reference), here present, accepting and purchasing for and in the name of the said corporation, and acknowledging due delivery and possession thereof, all and singular four certain lots of ground, together with the large brick edifice known as the Commercial Exchange ,and other improvements, and all the rights, privileges, customs, ways, servitudes, and appurtenances thereunto belonging or in anywise appertaining, situate in the first district of this city, in the square bounded by Saint Charles, Perdido, Carondelet, and Union streets, and designated respectively by the numbers fourteen, fifteen, sixteen, and seventeen on a certain plan drawn by George T. Dunbar, then surveyor of the late municipality No. "two," under date of the 25th day of April, 1845, and deposited as plan No. 63 in the book of plans of I. B. Marks, late a notary public in this city;

Which said four lots of ground adjoin each other and are of the dimensions following, to wit:

Lot No. "fourteen" measures twenty-six feet front on St. Charles street by one hundred feet in depth and front on Perdido street, of which two streets it forms the corner;

Lots Nos. "fifteen" and "sixteen" also measure each twenty-six feet front on said Saint Charles street by one hundred feet in depth, between parallel lines;

And lot No. "seventeen" measures twenty-five feet two inches front on Saint Charles street by the same depth of one hundred feet, between parallel lines, all American measure—

7 Being the same property which the said vendor acquired by purchase at a public sale thereof made by John L. Lewis, late sheriff of this parish, on the first day of December, 1849, by virtue of a writ of *fieri facias* to him directed by the hon. the fifth district court of New Orleans at the suit of "James Robb *vs.* The Commercial Exchange Company," No. 2449 of the docket of said court:

To have and to hold the said property and appurtenances unto the said purchaser (corporation), heirs and assigns forever; and the said vendor, for himself and his heirs, the said property and appurtenances herein conveyed to the said purchaser (corporation), heirs and assigns, shall and will warrant and forever defend against all legal claims and demands whatsoever; and the said vendor doth hereby by these presents, moreover, transfer unto the said purchaser (corporation) all and singular the rights and actions of warranty to which he is or in *in* anywise may be entitled against any and all of the former owners of the property herein conveyed, hereby

subrogating the said purchaser in and to the said rights and actions to be by the same enjoyed and exercised in the same manner that they might have been by the said vendor himself.

This sale is made and accepted for and in consideration of the price and sum of fifty-five thousand dollars ($55,000), in part payment and deduction of which the said corporation has, through its said grand master, well and truly paid the sum of ten thousand dollars, in lawful current money, and for the balance (to wit, the sum of forty-five thousand dollars) has furnished three certain promissory notes, subscribed by the said grand master in his said capacity, to the order of H. R. W. Hill, individually, all dated on the first day of January last (1853), and made payable at the Bank of Louisiana, in this city, as follows, to wit, two for the sum of fifteen thousand dollars each, in one and two years after date, with interest
8 at the rate of six per centum per annum from date until maturity, and one for the sum of fifteen thousand dollars, in three years after date, with interest at the rate of seven per centum per annum from date until maturity. The said three notes, if not punctually paid at maturity, are, it is distinctly understood, to bear interest thereafter at the rate of eight per centum per annum until final payment, and the same, it is furthermore understood, may be paid by the said corporation at any time previous to the first day of May next, together with such interest as shall have accrued thereon to that time.

Which said promissory notes, after having been duly paraphed "*ne varietur*" and countersigned by me, notary, to identify them with this act, were, with the said cash payment, delivered to the said vendor, who hereby acknowledges the receipt thereof and grants full acquittance therefor.

And in order to secure the full and punctual payment of the said three promissory notes and interest as therein stipulated the said corporation, through its said grand master, hereby specially mortgages the said described property in favor of the said vendor or of any future holder of the said notes, promising not to sell, alienate, nor in anywise incumber the same to the prejudice of this mortgage.

And as additional security in the premises it is agreed that the said corporation shall keep the buildings on the said property fully insured against fire and transfer the policy of insurance to the said vendor, to be held by him until the full and final payment of the said three promissory notes.

And it is hereby declared by the said grand master that at the meeting of the said Grand Lodge hereinbefore referred to a resolution was adopted which he was directed to cause to be incorporated in the present deed of conveyance; which resolution (as will appear by reference to a certified copy thereof, hereto annexed) is in
9 the words following, to wit:

Be it resolved, That in order to fully satisfy the minds of our brethren and others who may be disposed to give their aid to the purchase of the Grand Lodge hall, this Grand Lodge does now solemnly declare and proclaim that said purchase is to be made for

the purpose and object of creating a fund for charitable purposes, in the relief of worthy distressed members of the order, their wives, children, and families; and this Grand Lodge solemnly pledges itself that so soon as the said property shall be paid for the whole of the revenue which may be derived from it, after deducting necessary and unavoidable expenses on its account, shall be devoted to those objects; and it further pledges itself that should it ever be expedient to sell said property the funds thereof shall be reinvested as a permanent charity fund and the revenues thereof applied in the same manner, and the grand master is hereby directed to incorporate this resolution in the deed of sale of said property as the solemn pledge and contract of this Grand Lodge with those who have contributed or may hereafter contribute to the purchase thereof.

By reference to the annexed certificates of the recorder of mortgages and register of conveyances in and for this parish, dated this day, it will appear that the said property has never been alienated by the said vendor, and also that the same is free from any and all lien or incumbrances whatsoever.

Thus done and passed, in my office, at the said city of New Orleans, in the presence of Auguste Commandeur and Charles Frederick Barry, witnesses of lawful age and domiciliated in this city, who hereunto subscribed their names, together with the said parties and me, notary, this fourth day of February, in the year of our Lord one thousand eight hundred and fifty-three (1853).

(Original signed) JAMES ROBB.
H. R. W. HILL, *G. Master.*
A. COMMANDEUR.
C. F. BARRY.
H. B. CENAS, *Not. Pub.*

I, register of conveyances, certify the foregoing act to have been recorded in my office this day in Book No. 59, folio 420.

New Orleans, 5th February, 1853.

(Signed) F. B. VINET, *Dy Rr.*

I certify the foregoing to be a true copy of the original act on file and of record in my office.

In faith whereof I grant these presents, under my signature and the impress of my seal of office, at New Orleans, on this eleventh day of March, A. D. 1853.

(Signed) H. B. CENAS, *Not. Pub.*

Answer. Filed April 22nd, 1890.

GRAND LODGE OF LOUISIANA OF F. AND A. MASONS
vs.
CITY OF NEW ORLEANS.

No. 29919. Civil District Court, Division "B."

And now for answer comes the defendant herein and denies all and singular the allegations contained in plaintiff's petition and prays to be hence dismissed with all costs and for general relief.

Defendant further asks for a dissolution of the injunction herein, with 10 % damages.

(Signed) W. B. SOMMERVILLE,
Ass't City Att'y.

N. O., April 21st, 1890.

11 *Answer of W. J. Commerford. Filed May 8th*, 1890.

GRAND LODGE OF LA. F. AND A. MASONS *vs.* CITY OF NEW ORLEANS. } No. 29919. Civil District Court, Division "B."

Now into court comes W. J. Commerford, collector of the delinquent city taxes of 1888, and for answer to the writ herein served on him and the petition in this case says—

That he denies all and singular the allegations therein contained except as hereinafter admitted.

He admits that he is the collector of delinquent taxes of the city of New Orleans for 1888 and is advertising and about to sell the property therein mentioned for delinquent city taxes of 1888, but denies that it is in any way exempt from taxation, and he prays that this case be dismissed with 20 % damages and a judgment in his favor.

(Signed) WALTER D. DENEGRE,
Att'y for W. J. Commerford.

Note of Evidence. Filed December 15th, 1890.

Note of evidence on behalf of defendant, taken in open court on Thursday, December 10th, 1890, Hon. Fred. D. King presiding.

GRAND LODGE FREE AND ACCEPTED MASONS *vs.* BOARD OF ASSESSORS. } No. 29919. Civil District Court, Division "B."

12 Appearance-: Chas. F. Buck, Esq., and J. Q. A. Fellows, Esq., for plaintiff; W. B. Sommerville, Esq., for defendant.

By Mr. SOMMERVILLE: I offer in evidence the pamphlet marked "B," showing the receipts from all sources to the Grand Lodge F. and A. M. out of this property, particularly page 14 of said pamphlet.

It is admitted that during the year 1890 the Grand Lodge received from the same sources about the same amounts that it did during the year 1889.

And it is further agreed that this printed evidence shall go up in the transcript, in the event of an appeal to the supreme court, without being copied therein.

It is further admitted that the hall lately occupied by the Grand Lodge F. and A. Masons was erected in the year 1845 for a commercial exchange and was purchased by the Grand Lodge for a hall in 1853.

(Defendant rest-; case closed.)

Receipts and Disbursements Grand Lodge Hall from 1853 *to* 1889.

Year.	Stores.	Ball-room.	Lodges.	Total.	Repairs.	Total disbursem'ts.
1853 to 1859	$22,862 26	$6,970 45	$6,051 20	$35,883 91	$6,647 39	$16,188 57
1860 ..	4,700 00	920 00	2,620 00	8,040 00	.....	396 57
1861 ..	3,458 15	781 00	1,403 97	5,643 12	1,539 35	5,083 70
1862 ..	1,816 85	245 00	1,547 00	3,608 85	149 00	2,693 47
1863 ..	3,265 00	1,333 50	1,138 50	5,737 00	401 62	2,641 49
1864 ..	2,875 50	3,379 00	2,530 17	8,784 17	1,354 74	4,067 97
1865 ..	3,941 66	4,698 00	3,026 70	11,666 76	2,890 67	6,255 21
1866 ..	4,856 68	9,017 75	4,777 25	18,651 68	1,460 66	8,389 25
1867 ..	5,468 43	8,845 00	3,270 90	18,584 33	2,436 08	5,339 33
1868 ..	5,167 98	2,005 00	1,699 00	8,871 98	1,309 65	5,218 55
1869 ..	4,480 00	1,645 00	3,926 50	10,051 50	874 76	4,626 56
1870 ..	4,495 00	1,395 00	3,650 50	9,540 50	1,153 45	7,127 40
13						
1871 ..	5,000 00	2,690 00	3,114 00	10,804 00	879 75	4,609 94
1872 ..	5,850 00	1,624 60	2,501 25	9,975 50	481 10	4,001 23
1873 ..	4,090 00	960 00	1,867 00	6,917 69	1,170 40	4,468 05
1874 ..	4,239 00	434 00	3,350 25	8,023 25	2,052 00	5,903 47
1875 ..	2,116 00	260 00	2,689 40	5,065 40	174 00	2,451 54
1876 ..	2,115 50	370 00	2,138 35	4,623 85	2,676 62	5,045 62
1877 ..	1,637 00	482 35	3,066 78	5,186 13	1,276 84	3,399 64
1878 ..	1,278 00	375 50	2,243 50	3,897 00	737 43	2,545 21
1879 ..	1,871 00	228 50	1,749 16	3,849 66	822 70	2,009 32
1880 ..	2,030 00	380 50	2,293 35	4,703 85	136 00	2,840 21
1881 ..	2,062 25	207 00	2,010 25	4,269 50	945 10	2,330 01
1882 ..	2,215 50	315 00	1,719 84	4,250 34	174 90	1,821 07
1883 ..	2,545 00	605 00	1,432 25	4,582 25	2,493 90	5,244 91
1884 ..	2,070 00	1,057 00	1,585 75	4,712 75	855 45	2,556 74
1885 ..	2,643 25	357 50	1,976 35	4,977 10	604 00	2,698 90
1886 ..	1,991 00	72 00	1,331 25	3,394 25	325 45	1,602 60
1887 ..	2,135 00	125 00	1,908 65	4,168 65	33 75	1,530 85
1888 ..	2,222 00	185 00	1,131 00	3,538 00	25 50	1,559 80
1889 ..	1,041 50	155 00	1,021 25	2,216 75	106 30	1,736 66
Total..	$116,539 01	$46,919 05	$74,771 32	$238,229 98	$36,104 46	$126,783 95

Respectfully submitted.

JAMES C. BATCHELOR, M. D.,
Grand Secretary and Secretary of Board.

Note of Evidence. Filed December 17*th*, 1890.

Testimony and note of evidence taken in open court, Hon. Fred. D. King presiding, on Thursday, December 10th, 1890.

GRAND LODGE FREE AND ACCEPTED MASONS *vs.* BOARD OF ASSESSORS. } No. 29919. Civil District Court, Division "B."

Appearances: Chas. F. Buck, Esq., and J. Q. A. Fellows, Esq., for plaintiffs; W. B. Sommerville, Esq., for defendant.

By Mr. FELLOWS: I offer in evidence the pamphlet containing

the constitution of the Grand Lodge of the State of Louisiana
14 Free and Accepted Masons and the general regulations or by-laws and charter, marked "A," and especially pages 61, 62, 40, 30, 31, and 42*b*.

It is agreed that in case of appeal that the pamphlet shall go up in the original without being copied in the transcript, and this agreement is to apply to all printed matter offered in evidence.

Counsel for plaintiff offers in evidence the title deed marked "AA."

Document "A."

Grand Lodge hall.

SEC. 89. The Grand Lodge hall (58) and the revenues arising therefrom shall be placed in charge of a committee of twelve brothers, to be called the "board of directors of the Grand Lodge hall," who shall have the entire control of the same, subject to the resolution incorporated in the act of purchase, these regulations, and to the resolutions and edicts of the Grand Lodge.

SEC. 90. This committee shall consist of twelve members, viz., grand master, grand treasurer, and grand secretary *ex officio*, and nine others, six of whom shall be masters or past masters of lodges and three of whom may be selected from the craft at large, to be divided into three classes, composed of two of the former and one of the latter, one class to pass out and another to be chosen annually by the Grand Lodge for the long term, at the same time and under the same regulations which are provided in the election of grand officers; vacancies occurring during the recess of the Grand Lodge may be filled by the grand master.

SEC. 91. The grand master shall be the president, and the grand secretary the secretary of the board of directors. The grand tyler shall take care of the building and property, and receive such
15 compensation therefore as the board shall determine. A majority of the board shall be necessary to form a quorum.

SEC. 92. The board of directors shall make all necessary improvements, changes, alterations, or repairs to the building; shall have power to make leases, collect rents, effect insurance, contract loans, if necessary, for the payment of the debts now incumbent on the property, and in every other respect manage and administer the property and its appurtenances as the agents of the Grand Lodge, and shall keep a correct record of all its transactions and proceedings.

SEC. 93. All the rents and revenues of the property and all donations necessary, together with all the surplus revenues proper of the Grand Lodge, to be applied to the payment of the debts contracted on account of the Grand Lodge hall until the same be fully extinguished.

SEC. 94. So soon as the property shall be paid for, the whole revenues which may be derived from it, after the payment of the necessary and unavoidable expenses on its account, "shall be devoted exclusively to charitable purposes—in the relief of worthy distressed

members of the order, their widows and orphans—and be distributed in such manner as the Grand Lodge shall determine, not inconsistent with the general good."

SEC. 95. The board of directors may make such regulations for their own government, the keeping of their accounts, and the particular administration of the property, not inconsistent with the constitution, general regulations, resolutions, and edicts of the Grand Lodge, as they shall deem necessary. They shall make a full report of their proceedings and the exact state and distribution of the funds under their control at each annual communication of the Grand Lodge.

Louisiana Relief lodge.

SEC. 96. The charter granted to Louisiana Relief lodge and issued on the 1st of July, 1854, is hereby perpetuated, and is to continue so long as two constituent lodges located in New Orleans (59)
16 shall desire to retain it. The members of said lodge shall consist of its officers (60), who may be (selected from its constituents at large) past masters and the masters and wardens in office (or their proxies) of such lodges as shall hold membership in the same.

SEC. 97. The officers of this lodge and their duties shall correspond, so far as may be, with the regulations for the government of the constituent lodges. The lodge may more particularly prescribe the duties of its officers and members and make such other regulations as it may deem necessary to better accomplish the ends of its creation.

SEC. 98. It shall remain invested with all the property, rights, credits, effects, and revenues of whatsoever nature which it now possesses, and have the power to receive donations and to raise means for its support and maintenance and to invest or expend the same in any manner it may deem best and most conducive to the accomplishment of the ends of its creation and under such regulations as itself shall determine.

SEC. 99. Said lodge shall have no right to confer degrees nor to representatives in the Grand Lodge, nor shall it be required to pay any dues, fees, or charges to this Grand Lodge. It shall annually make return of its officers and members and the lodges they represent, and report to the Grand Lodge at each annual grand communication a synopsis of all its transactions during the year and such other matters as it shall deem of interest to the Grand Lodge or to Freemasonry generally.

(*e*) Resolved, That when the Masonic temple hereby authorized to be erected shall be completed and paid for, its revenues shall be subject to the provisions of the resolution submitted by P. G. Master John Gedge and adopted by the Grand Lodge at its communication of January 31, 1853, for the disposition of the revenues of the
17 Grand Lodge hall, and for this purpose said resolution is hereby readopted, and which reads as follows:

(*f*) Be it resolved, That in order to fully satisfy the minds of our brethern and others who may be disposed to give their aid to the

purchase of the Grand Lodge hall, this Grand Lodge does now solemnly declare and proclaim that said purchase is to be made for the purpose and object of creating a fund for charitable purposes, in the relief of worthy distressed members of the order, their wives, children, and families; and this Grand Lodge solemnly pledges itself that so soon as the said property shall be paid for the whole of the revenue which may be derived from it after deducting necessary and unvoidable expenses on its account shall be devoted to those objects; and it further pledges itself that should it ever be expedient to sell said property, the proceeds thereof shall be reinvested as a permanent charity fund and the revenue thereof applied in the same manner.

(*g*) Resolved, That the perpetual loan from Masonic bodies for construction of the temple shall not be considered as one of the debts incurred by its construction, to be paid off before the revenues are to be distributed as charity. Adopted, 1871.

(*h*) On assessment.—1. Resolved, That the several lodges under this jurisdiction be required to collect (for the Grand Lodge) the sum of three dollars for each degree conferred, provided that this regulation shall not apply to degrees for which applications shall have been filed previous to the adoption of this resolution.

(*j*) Contributions.—2. Resolved, That the several lodges of this State be requested to solicit and collect contributions for the temple fund of the Grand Lodge, from their own members and others, payable annually or otherwise, and that each lodge be requested to add subscriptions of such sums from its general funds as may be within its power to give.

(*k*) Subscription.—3. Resolved, That books of subscription
18 (to be provided by the Grand Lodge) be opened and permanently kept by each lodge in the State, and that the W. masters be specially charged to have them carefully and neatly preserved and the signatures of the donors taken in writing for reference by those who shall follow us. Nos. 1, 2, and 3 adopted February 14, 1872.

(1) Grand Lodge assessment.—Candidates must pay three dollars to the Grand Lodge, in addition to whatever amount is fixed to be paid to the lodge by its by-laws, for any degree conferred, and it is a direct violation of an edict of the Grand Lodge to not collect three dollars extra from the candidate and have to use the funds of the lodge to pay to the Grand Lodge the amount that should have been paid by the candidate to the Grand Lodge fund. Girard, 1874.

Act of Incorporation.

An act incorporating the Grand Lodge of the State of Louisiana, and for other purposes.

Whereas, John Soulie, P. F. Dubourg, L. Moreau Lislet, Modeste Lefebvre, Senior, Yves Lemonnier, Junior, Augustus Guibert and J. B. Pinta, of the Grand Lodge of Freemasons of this State have, by their petition, stated that there has existed and still exists in this State divers lodges or societies of Freemasons, over which there is

a presiding or superintending Grand Lodge, composed of the petitioners, as members, and divers others who are or may join in promoting the good of the craft, founded on the ancient usages of their society, the principles of which are charity and universal benevolence; to the end, therefore, that charitable institutions may be promoted—

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana, in General Assembly convened, That the several persons hereinbefore named, and others who are or may become members of the said Grand Lodge, and their successors, shall be and are hereby deemed to be a body corporate and politic in name and deed, by the style of the Grand Lodge of the State of Louisiana, and by the said name and style shall have perpetual succession of officers and members, and a common seal to use, and shall have full power to make, alter, amend and change such by-laws as may be agree- on by the members of the same: provided, such by-laws be not repugnant to the laws or constitution of this State or of the United States.

SEC. 2. And be it further enacted, That they shall have full power and authority, under the style and name of the Grand Lodge of the State of Louisiana, to take, hold and enjoy, real and personal property; to sue for and recover all such sum or sums of money as now are or hereafter may become due to the said lodge, by any name or style whatever, at any court of law or any tribunal having jurisdiction thereof, and the rights and privileges of the said lodge in any court or at any tribunal whatever; to defend, and also to receive, take and apply bequests or donations as may be made to and for the uses and purposes intended by the said institution.

SEC. 3. And be it further enacted, That all the regular lodges already constituted under the power and jurisdiction of the said Grand Lodge, are hereby declared to be bodies corporate and politic in name and deed, by whatever style or name they may be called and known in their constitution, with equal powers to those which are hereby given to the said Grand Lodge, so long as the said lodges remain under the power and jurisdiction of the said Grand Lodge and in all things abide by and conform themselves to the resolutions and by-laws of the same, and no longer.

MAGLOIRE GUICHARD,
Speaker of the House of Representatives.
N. MERIAM,
President of the Senate.

Approved March 18, 1816.

WM. C. C. CLAIBORNE,
Governor of the State of Louisiana.

(Acts of 1816, pp. 99 and 100.)

An act supplementary to an act entitled "An act incorporating the Grand Lodge of the State of Louisiana, and for other purposes."

Be it enacted by the senate and house of representatives of the State of Louisiana, in General Assembly concened That all the regu-

lar lodges which have been constituted by the Grand Lodge of the State of Louisiana since the passage of the act to which this is a supplement as well as all the regular lodges, which shall be hereafter constituted by the same, are hereby declared to be bodies corporate and politic, in name and deed, by whatever style or name they may be called and known in their constitution, with equal powers to those which are given to the said Grand Lodge by the said act, so long as the said lodges shall remain under the power and jurisdiction of the said Grand Lodge, and in all things abide by and conform themselves to the resolutions and by-laws of the same, and no longer.

Approved February 11, 1819.

(Acts of 1819, p. 16.)

(Page 271, acts of 1855.)

(No. 225.)

An act to exempt from taxation the hall of the Grand Lodge of F and A. Masons of the State of Louisiana.

Be it enacted by the senate and house of representatives of the State of Louisiana, in General Assembly convened, That the building situated on the corner of St. Charles and Perdido streets, in the city of New Orleans, and known as "the Hall of the Grand Lodge of F. and A. Masons, of the State of Louisiana," shall be exempt from State and parish taxation, so long as it is occupied as the Grand Lodge of the F. and A. Masons.

21 JOHN M. SANDIGE,
Speaker of the House of Representatives.
ROBERT C. WICKLIFFE,
President of the Senate.

Approved March 15th, 1855.

P. O. HEBERT,
Governor of the State of Louisiana.

A true copy.
ANDREW S. HERRON,
Secretary of State.

Supplemental Transcript, Supreme Court of La. *Filed Jan'y* 26, 1891.
T. McC. Hyman, Clerk.

No. 10774.

Testimony. Filed January 22nd, 1891, *nunc pro tunc* as of Date December 17, 1890.

THE GRAND LODGE OF LOUISIANA FREE AND ACCEPTED MASONS
vs.
THE CITY OF NEW ORLEANS.
No. 29919. Civil District Court, Div. "B."

The objects proposed by the institution of Free and Accepted Masons and the principals upon which the institution is founded

are charity and universal benevolence. The order seeks to foster among its members a belief in God, the immortality of the soul, and universal brotherhood. By charity they mean love which is as extensive as the created world and as boundless as eternity.

Their charity is not confined to the members of the order, but from the beginning, while each initiate is charged to contribute to the wants of a brother as far as his necessities may require and the means of the giver will permit, yet he is enjoined not to con-
22 fine his relief to the brethren of the order, but that wherever he should find any one in necessitous circumstances to contribute to his relief as he would to that of a brother.

Fees, dues, and contributions are exacted from each member of the order for necessary and ordinary expenses of the lodge and to create a fund for the purposes of charity, to be distributed as occasion might require or to invest as a permanent charity fund, the revenues of which to be used for charitable purposes.

Such has been without change the rules and regulations of Freemasons from their earliest history and is and always has been held as a landmark and unchangeable law of the order.

The distribution of their charity funds by Freemasons is purely eleemosynary. Those funds are not distributed as in most other secret societies. No one, however large the fund on hand, has the right, in case of sickness or death, to any certain or fixed sum as benefits. It is not a life or health insurance association or benefit society in any form or nature whatsoever. Only those who are actually in want can call upon the charity funds of the order, and then not for any fixed sum, but only for such assistance as the necessities of the case may require and the means at disposal may permit, and if the means on hand are inadequate every brother is expected to contribute in proportion to his means and the necessities of the case.

Freemasonry is therefore a purely eleemosynary institution. All its funds in excess of the necessary actual current expenses of the organization are devoted to charitable uses.

Many thousand dollars in excess of the usual dues and fees have been contributed by the members of the order in this State (and elsewhere) to the charitable fund. All the receipts of the Grand Lodge since 1853 in excess of its necessary expenses, amounting to several thousand dollars, and many thousand dollars in the
23 shape of special annual taxes and voluntary contributions have been added to this fund and used for the payment of the purchase price of the property corner of St. Charles and Perdido streets, that, as soon as paid for, its net revenues could be made available for the charities of the order and as contemplated and expressed in the act of purchase.

In the meantime, anticipating the time when the property would be paid for and the net revenues become available, large sums have been expended in charity, thus delaying the final completion of the payment of the property in times of pestilence (and we have had since the purchase of the property six epidemics of yellow fever in New Orleans and one in Shreveport, Memphis, and Florida), two disastrous overflows of the Mississippi river, the Johnstown disaster,

and the fires in Michigan and Chicago, and the earthquake at Charleston all calling for and receiving from the charity funds extensive assistance and aid.

As an adjunct and agent of the Grand Lodge in the distribution of this charity there was organized in 1853, and after the purchase of the property, the Louisiana Relief lodge, still in active existence, which has met the calls of hundreds in distress and distributed many thousands of dollars in relief of the distressed, in caring for the sick, and in burying the dead.

Every lodge under the jurisdiction of the Grand Lodge has contributed to this fund and have their special charitable regulations, and their charity funds have been from time to time *been* aided by appropriations from the charitable fund of the Grand Lodge. The invariable rule has been to act upon the absolute necessities of the individual, the wants of the poor and unfortunate, the care in poverty, in sickness, and in the burial of the dead, the only limits being the wants, the necessities of the individual, and the
24 means at the disposal of the fraternity collectively as organizations, grand and subordinate lodges, and individually. Such has ever been and still is the practice of the order of Freemasons and the Grand Lodge and such it must ever be so long as it remains the institution of Freemasonry.

I have been a member of the fraternity of Freemasons since 1849, and an active worker in the order in Louisiana since 1851, and an active member of the Grand Lodge since 1853, when the property in question was purchased, with a seat and vote in that grand body during all the time and its grand master from February, 1860, to February, 1866, and I know whereof I speak.

(Signed) J. Q. A. FELLOWS.

A true copy.

E. A. LUMINAIS, *Clerk.*

Mr. Charles F. Buck (jurat waived) says: I have heard the testimony read by Mr. Fellows attentively and have myself been a member of the order since 1866, and for the last four years its grand master. I corroborate thoroughly, word for word, everything that Mr. Fellows has stated.

Plaintiff rests.

Submission.

Extract of the Minutes of Thursday, December 11th, 1890.

Present: The Hon. Fred. D. King, judge.

GRAND LODGE F. AND A. MASONS
vs.
CITY OF NEW ORLEANS. } No. 29919. Civil District Court, Division "B."

This cause came on to be heard—present, J. Q. A. Fellows
25 and C. F. Buck, for plaintiffs; W. B. Sommerville, for defendants—when, after hearing pleadings, evidence, and argument, this case was submitted for adjudication.

Judgment.

GRAND LODGE OF THE STATE OF LOUISIANA F. AND A. MASONS *vs.* CITY OF NEW ORLEANS. — No. 29919. Civil District Court, Division "B."

For the reasons assigned in the written opinion of the court on this day delivered and filed—

It is ordered, adjudged, and decreed that there be judgment in favor of plaintiff, Grand Lodge of the State of Louisiana F. and A. Masons, and against defendant, City of New Orleans, perpetuating the writ of injunction issued herein and decreeing that the hereinafter-described property *to* be exempt from taxation so long as it shall be the property of plaintiff, and further decreeing that the assessments and levy of taxes thereon for any and all years, and especially for the years 1888, 1889, & 1890, *to* be illegal, null, and void, said property being described as follows:

A portion of ground and the buildings and improvements thereon situated *of* the corner of St. Charles and Perdido streets, in the square bounded by those streets and Carondelet and Union streets, known as the hall of the Grand Lodge of F. and A. Masons of the State of Louisiana, which property was purchased by plaintiff from James Robb by act before H. B. Cenas, notary, on the 4th February, 1853.

It is ordered and decreed that defendant pay costs.

26 Judgment rendered January 2nd, 1891.

Judgment signed January 9th, 1891.

(Signed) FRED. D. KING, *Judge.*

Motion of Appeal.

Extract of the Minutes of Monday, January 12th, 1891.

Present: The Hon. Fred. D. King, judge.

GRAND LODGE F. AND A. MASONS *vs.* CITY OF NEW ORLEANS. — No. 29919. Civil District Court, Division "B."

On motion of Carleton Hunt, city att'y; W. B. Sommerville, ass't city att'y, and upon suggesting to the court that there is error to the prejudice of the City of New Orleans in the judgment herein rendered on the 2nd of January, 1891, and signed on the 9th day of January, 1891, and that it feels aggrieved thereby and desires to appeal suspensively therefrom; that there is involved herein constitutionality and validity of taxes due the City of New Orleans for the years 1888, 1889, and 1890—

It is ordered that a suspensive appeal be allowed the City of New Orleans from the judgment herein rendered on the 2nd day of January, 1891, and signed on the 9th day of January, 1891, returnable to the supreme court on the 3rd Monday of January, 1891, without bond, as the law directs.

Proceedings, Supreme Court.

Original opinion.

Filed, New Orleans, Monday, May 11th, 1891.

GRAND LODGE OF THE STATE OF LOUISIANA OF FREE AND ACCEPTED MASONS
vs.
THE CITY OF NEW ORLEANS.

27 By Mr. Justice WATKINS:

The plaintiff enjoined the city from proceeding to seize and sue for delinquent taxes of the years 1888, 1889, and 1890 property of which it is the owner and which is situated in the square bounded by St. Charles, Perdido, Union, and Carondelet streets, in the city of New Orleans, and known as the "Masonic Grand Lodge hall," alleging its exemption from said taxes under the provisions of act 225 of 1855.

It alleges that said exemption was granted by the State in consideration of the principles and objects of the institution of Freemasonry, which are charity and individual benevolence and the establishment and promotion of charitable institutions, and in further consideration of the resolution that is contained in its act of purchase of said property, in 1853, to the effect that the entire revenues of same, as soon as it is paid for, shall be devoted "to the relief of worthy distressed members of the order, their wives, children, and families, and as a permanent charity fund," etc.; and it avers that said exemption "became a contract between the State of Louisiana and the Grand Lodge * * * so long as the said property should be the property of the Grand Lodge and be occupied by it" and the revenues continue to be so applied.

It is further averred that each of those conditions now exists and has continually existed since the enactment of said exemption law, and that the law under the color of which the defendant claims the right to levy and collect said taxes impairs the obligation of its protected contract, in violation of section ten of article one of the Constitution of the United States, and is therefore null and void.

The city's answer is a general denial.

The contention of the plaintiff is that said exemption, under the circumstances related, had and has the force of a legislative
28 contract, which could not be repealed or impaired by subsequent constitutional provision or statutory enactment.

On the other hand, the contention of the defendant is that act 225 of 1855, relied upon by the plaintiff, conferred a mere gratuity, benefaction, or munificence, which was subject to repeal or legislative recall at any time; that article 207 of the State constitution repeals the act of 1855 by imposing the additional restriction upon the exemption of the property of charitable institutions that same "shall not be used or leased for purposes of private or corporate

profit or income," and that proof of the property not being so used is a condition precedent to the allowance of the exemption.

This contention of the city is supplemented by the further one that, as in the charter granted to the plaintiff in 1816 there is no mention of the exemption of its property from taxation, and as the property in question was acquired by it two years prior to the enactment of the exemption act, and the exemption did not therefore constitute any part of the consideration thereof, said act does not contain the constituent elements of a contract which could be protected by the Federal Constitution from impairment.

And therefore the act of 1855 became subject to repeal by the contrary provisions of article 207 of the constitution of the State, there having been in existence no contract on the part of the State not to tax the plaintiff's property at the time of its acquisition, and there having been no covenant on the part of the State stipulated in its charter as to the exemption of property which it might thereafter acquire.

From the premises laid down on either side, it is clear that the decision of this case must necessarily depend upon the existence *vel non* between the State and plaintiff, antecedent to the adop-
29 tion of the constitution of 1879, of a contract in respect to the exemption of its property from taxation.

It is conceded that the State granted a charter to the Grand Lodge in 1816, and that it contained no mention of any exemption of its property, present or prospective, from taxation; that the property alleged to be exempt was purchased in 1853, and the exemption statute was not enacted until the 15th of March, 1855. It is couched in the following terms, viz:

"Be it enacted, That the building situated at the corner of St. Charles and Perdido streets, in the city of New Orleans, and known as the hall of the Grand Lodge of F. and A. Masons of the State of Louisiana, shall be exempt from State and parish taxation so long as it is occupied as the Grand Lodge of the F. and A. Masons."

Act 225 of 1855, p. 271.

In order to disclose a consideration for this alleged contract, plaintiff introduced proof to show that the Grand Lodge is an eleemosynary institution "founded on the ancient usages of their society, the principles of which are charity and universal benevolence."

But, while conceding the charitable objects and purposes of the order, defendant's counsel contends that that is insufficient to maintain the exemption without further proof that said exempt property has not been "used or leased for purposes of private or corporate profit or income." Court, art. 207.

We are thus presented with a close question of constitutional law, and to resolve it satisfactorily recourse must be had to the decisions of the Supreme Court, as well as our own, and the opinions of text-writers.

First, consulting Judge Cooley, whose views upon such questions are always lucidly expressed and instructive, we find that after

having made a careful examination of the authorities he has
30 taken the distinction which the city attorney suggests as the correct one on which to place our decision.

That author has divided into two distinct topics the question here presented as one and indivisible. Treating of charters granted by a State to private corporations containing stipulations exempting corporate franchises and property from taxation, he says such a charter "is a contract between the Commonwealth and the corporators, and that such stipulations are *irreparable*."

Cooley on Taxation, chap. III, p. 55.

But, in subsequently discussing exemption of corporate franchises and property which are "granted on consideration of public policy," he says: Same "may be recalled whenever the legislative view of public policy may be changed. To the individuals, corporations, or associations benefitted by them they are to be regarded as favors or privileges, merely to continue during the pleasure of the sover-ignty, and there can be no breach of faith—certainly no want of power—in terminating them at any time."

Ibid., chap. XI, p. 145, 54.

See also cases illustrating this principle which are cited on page 54.

As preliminary to this distinction the author says:

"An exception, however, is held to exist in case of an agreement by a State, entered into for a consideration, to refrain from exercising this power, that provision of the Federal Constitution which forbids the State passing laws which impair the obligation of contracts applying as well to contracts by the State itself as to those between individuals.

* * * * * * *

"A number of cases for which this has been the precedent are referred to in the note, but it is conceded in all of them that
31 there must be a consideration to the State for the relinquishment or the elements of a contract will be wanting." *Ib.*, p. 54.

A leading and conspicuous case fairly illustrating the questions herein involved is City of New Orleans *vs.* St. Anna's Asylum, 31 A., 292.

In that case it appears that the defendant asylum was created by a legislative charter granted in 1853, and it acquired in 1874 the property which was alleged to be exempt, and resisted the payment of taxes assessed thereon in 1876. In stating the question before it the court said:

"Under the settled jurisprudence there can be no doubt of the liability of the property in controversy unless removed from the general rule by some exception. Such exemption is claimed as resulting from the charter of the defendant corporation, by which it is contended that a contract was created divesting the State of all power to repeal the exemption claimed."

After quoting the provisions of the charter which were relied upon as constituting a contract, the court proceeds to state:

"The solitary question, therefore, is, was this exemption a contract of *such a nature* as to invest the corporation with such a right as to remove it from all subsequent legislative control? We think not," etc.

Proceeding with the expression of the reasons which influenced this conclusion, they said—

"That a general power to repeal or modify a charter enters into the charter and *pro tanto* divests it of the character of a contract is now the settled opinion of the Supreme Court of the United States." (Italics are ours.)

Hence the conclusion of the court was that the State had
32 the authority, under the general power it possessed of repealing or modifying the legislative charters of private corporations, to divest it of the character of a contract altogether.

That case was carried up, on writ of error, to the Supreme Court—Asylum *vs.* New Orleans, 105 U. S., 362—and it was therein reversed and the exemption sustained. Referring to the sixth section of the legislative charter of the asylum, which grants the exemption relied upon, the court said:

"The corporation filed an answer setting up the exemption from taxes contained in its charter, and claiming that it was a contract, and contended that the constitution of 1868 and the statute passed in pursuance thereof impaired the obligation of said contract, in violation of the tenth section of the first article of the Constitution of the United States."

After stating the grounds of the decision by our predecessors, as shown by our previous quotations, they proceeded to make an examination and give a synopsis of the cases cited and relied upon, and said:

"We think they do not apply to the case now under consideration. In the first place, the constitutions of Michigan and Wisconsin, in which States those cases arose, reserved to their legislatures respectively the power to alter, amend, and repeal charters of incorporations. In the next place, in those cases the exemption granted was held to be gratuitous on the part of the State, no consideration passing therefor from the companies. It was no part of their charters of incorporation, and therefore formed no consideration for their acceptance, whereas in the present case the exemption was expressed in the charter itself and was one of the inducements offered for its acceptance and for making donations for the establishment of the institution."

Thereupon the court held that the imposition of the tax in
33 question against the property of the asylum "was not a legitimate exercise of the power of dissolution reserved in the code" of Louisiana, and that the 118th article of the constitution of 1868 was in violation of the Constitution of the United States in this respect.

We have quoted from this decision at great length, as it fully sanctions the distinction taken by Judge Cooley and affirms the correct-

ness of the principle on which the exemption is placed—that is to say, upon a provision of a legislative charter for the granting of which the exemption constitutes a consideration and an inducement to the acceptance thereof.

Home of the Friendless *vs.* Rouse, 8 Wallace, 430, is an exactly parallel case.

From the statement of the case it appears that the legislature of the State of Missouri granted a charter in 1853 to a private corporation styled the Home of the Friendless, a charitable institution, and therein a stipulation was placed exempting all of its property from taxation, in general terms; that under the provisions of a State constitution adopted in 1865 the legislature authorized the levy of a tax on the property of this corporation, and the corporation resisted payment on the ground of the impairment of its contract of exemption. This exemption was denied by the Missouri court, but the supreme court, on writ of error, held:

"This charter is a contract between the State of Missouri and the corporation; that the property given for charitable uses specified in it shall so long as it is applied to those uses be exempt from taxation. It follows that any attempt to tax it impairs the obligation of the contract."

To the same effect are many other decisions of the Supreme Court, and we cite the following, viz:

34 University *vs.* People, 99 U. S., 309.
Meritt *vs.* Philadelphia, &c., 18 Wall., 206.
North Missouri R. R. Co. *vs.* Maguire, 20 Wall., 46.
Erie R. R. Co. *vs.* Pennsylvania, 21 Wall., 497.
The Delaware R. R. tax, 18 Wall., 206.
Miller *vs.* The State, 15 Wall., 478.
The Burghampton Budge, 3 Wall., 51.

As appertaining to this question, quite a number of decisions collateral thereto may be appropriately cited.

For instance, in Edwards *vs.* Kearsay, 96 U. S., 59, what a contract was, in a constitutional sense, was defined to be "the agreement of minds, upon a sufficient consideration, that something specified shall be done or shall not be done."

In Fletcher *vs.* Peck, 6 Cranch, 87, it was held that when a State "law is in the nature of a contract and rights have been vested under it, its repeal cannot divest those rights."

It is conceded to be the settled interpretation of the Supreme Court, in reference to the contract clause of the Constitution of the United States, that a State constitution is a law within the meaning thereof.

Railroad Company *vs.* McClure, 10 Wall., 511.
Gray *vs.* Davis, 1 Woods, 420.
Green *vs.* Barry, 15 Wallace, 610.
White *vs.* Hart, 13 Wallace, 647.
Williams *vs.* Bruffy, 95 U. S., 184.
Bank *vs.* Skelly, 1 Black, 436.
Dodge *vs.* Woolsey, 18 Howard, 331.

But the decisions are quite as numerous and as pertinent which illustrate the correctness of the second proposition of Judge
35 Cooley, and of this class the case of Rector, &c., of Christ Church *vs.* County of Philadelphia, 24 Howard, 300, may be taken as a leading and forcibly expressed opinion thereon.

In the statement of the case the court said:

"In the year 1833 the legislature of Pennsylvania passed an act which recited that Christ Church hospital, in the city of Philadelphia, has for many years afforded an asylum to numerous poor and distressed widows who would probably else have become a public charge; and it being represented that in consequence of the decay of the buildings of the hospital estate and the increasing burden of taxes its means are curtailed and its usefulness limited," they enacted "that the real property, including ground rents, now belonging and payable to Christ Church hospital, in the city of Philadelphia, so long as same shall continue to belong to the said hospital, shall be and remain free from taxes."

It further appears that in 1851 the Pennsylvania legislature passed a law declaring "that all property, real and personal, belonging to any association or incorporated company which is now by law exempt from taxation, other than that which is in the actual use and occupation of said association or incorporated company, and from which an income or revenue is derived by the owners thereof, shall hereinafter be subject to taxation in the same manner and for the same purposes as other property is now by law taxable; and so much of any law as is hereby altered and supplied be, and the same is hereby, repealed."

The Pennsylvania court held that the exemption conferred by the statute of 1833 in favor of the Christ Church hospital was partially repealed by the act of 1851, and that an assessment of its property in virtue thereof was not repugnant to the contract
36 clause of the Federal Constitution.

On writ of error the plaintiff's contention was that the exemption of the act was perpetual, as the act itself was in effect a protected contract, just as plaintiff's contention is here.

The court, through Mr. Justice Campbell, says:

"This concession of the legislature was spontaneous, and no service or duty or other remunerative condition was imposed on the corporation. It belongs to the class of laws denominated *privilegia favorabilia*. It attached only to such real property as belonged to the corporation and while it remained as its property; but it is not a necessary implication from these facts that the concession is perpetual or was designed to continue during the corporate existence. * * * The inducements that moved the legislature to concede the favor contained in the act of 1833 are special and were probably temporary in their operation. * * * It is in the nature of such a privilege as the act of 1833 confers, that it exists *bene placitum*, and may be revoked at the pleasure of the sover-ign."

We have quoted from this case at length because there seems to be an exact parallel between it and the instant case, and for that reason the decision is peculiarly applicable and pertinant.

In Salt Company *vs.* East Saginaw, 13 Wall., 373, the court very clearly distinguished statutes which contain exemptions from taxation, the property of private corporations, merely, and those which grant charters to such corporations and therein stipulate continuing exemptions.

The court, in analyzing the statute of Michigan which was therein involved, made this observation: "A law dictated by public policy and the general good, &c.—such a law is not a contract, except to bestow the promised bounty upon those who earn it so long as the law remains unrepealed. There is no pledge
37 that it shall not be repealed at any time.

Again: "Charters granted to private corporations are held to be contracts. Powers and privileges are conferred by the State, and corresponding duties and obligations are assumed by the corporation."

In the case of Commonwealth *vs.* Bird, 12 Massachusetts, 443, a similar principle is announced. The same is true of the case of Brainard *vs.* The Town of Colchester, 31 Conn., 407. But the whole question is very tersely put and decided in People *vs.* Roper, 35 New York, 629, the court declaring that:

"It is also true that, for adequate consideration and in the exercise of its general authority, (the State) may invite investments in a particular description of property for the benefit of the State by stipulating for its exemption in the hands of the holders from assessment as a subject of general taxation. * * *

But "it is never to be assumed, however, that the State has even to this extent fettered its power in the future, except upon clear and irresistable evidence that the engagement was in the nature of a private contract, as distinguished from a mere act of general legislation, &c."

After quoting at length the language of Chief Justice Marshall in Providence Bank *vs.* Billings, 4 Wheaton, 429, the court said:

"For an *irreparable* contract of such a nature in the name of the body politic no authority is found either in our legislative or our congressional precedents.

"*A contract in a corporate charter for immunity in respect to a franchise conferred by Government is essentially distinct in its nature from a prospective absolution of the citizen from his future obligations to the State.*" (Italics ours.)

We are of opinion that the foregoing summary of authority,
38 Federal and State, fully sanctions and substantiates the correctness of the distinction made by Judge Cooley between repealable and irrepealable statutory exemptions from corporate taxation.

We have carefully examined the decisions of the courts of last resort in many other States as well as those of this court and have found none which pronounce a contrary view. On the contrary, we find them in full accord therewith in every particular.

In the case of City of New Orleans *vs.* The Poydras Orphans' Asylum, 33 A., 850, in which the plaintiff's effort to collect taxes assessed against property of the defendant was resisted on the

ground that same was exempt from taxation by various statutes enacted prior to the adoption of the constitution of 1868, and which the plaintiff contended to have been repealed thereby, passed off on the ground that there was "no incompatibility between the exemption laws invoked and the constitution of 1868, and hence the exemption laws invoked were not repealed thereby, but remained in full force and the tax was defeated."

It is a fact fully attested by a comparison made of the exemption law of 1855 that is invoked by the plaintiff and the pertinant provisions of article 207 of the constitution that the former is subjected by the latter to an additional and essential condition precedent that is destructive of the claim of the plaintiff unless the exemption be given the force of a protected contract.

The following extract from article 207 is relied upon, viz:

"The following property shall be exempt from taxation and no other, viz: All public property, places of religious worship or burial, all charitable institutions; * * * provided the property so exempted be not used or leased for purposes of private or corporate profit or income."

39 In considering a germane question in State *ex rel.* Bartel *vs.* Board of Assessors, 34 A., 574, we held that the primary objects of the "Supreme Council of 33 Scotch Masonry," as appears from the evidence in the record and its legislative charter of 1870, are benevolence and charity, and as such was entitled to enjoy the prohibition contained in article 207 of the constitution; but because the evidence disclosed that part of the buildings were rented for stores and produces' revenue, we held that that was obnoxious to the proviso of article 207 of the constitution, and maintained the tax. See also State *ex rel.* Tulane Founder Board, 35 Ann., 668.

The only condition imposed by the exemption act of 1855 was that the exempt property should continue to be "occupied as the Grand Lodge of the F. and A. Masons."

The proof shows that during the years in which the complained-of assessments were made a part of the ground floor of the exempt property was rented for stores, and that some of the rooms were rented for other like purposes, and that from these sources a large amount of corporate income had been realized, and if the plaintiff does not possess a contract in the sense of the Federal Constitution, its property is clearly subject to taxation under the terms of the Bartel decision and article 207 of the constitution.

And it is well worthy of remark that it is in line with many previous adjudications on this question; among the number the following may be cited, viz:

City of New Orleans *vs.* The Congregation, &c., 15 A., 379.
City of New Orleans *vs.* N. O. Mechanics, 27 A., 436.
New Orleans *vs.* People's Bank, 27 A., 646.
New Orleans *vs.* Metropolitan Loan, &c., 27 A., 498.
New Orleans *vs.* St. Patrick's Hall, 28 A., 512.
40 State *vs.* Bank, 23 A., 271.
New Orleans *vs.* Lafayette Ms. Co., 28 A., 750.
City *vs.* Carondelet Canal & Nav'g Co., 36 A., 396.

On the whole, our conclusions are that act 225 of 1855, which exempts from State and parish taxation the property of the plaintiff, "so long as it is occupied as the Grand Lodge of the F. and A. Masons," does not contain a contract between the State and that corporation that is irrepealable, but that the exemption of the statute was granted on consideration of public policy, independently of the consideration existing in its previously granted legislative charter, and subject to be recalled whenever the legislative view of public policy might be changed; that the provisions of that act are subordinate to those of article 207 of the constitution of the State providing that the property of charitable institutions shall be exempt from taxation, if it "be not used or leased for purposes of private or corporate profit or income;" that this constitutional provision, nor the statute under which the tax in question was levied, *are* amenable to the constitutional invalidity urged against them.

We very much regret that we have been constrained to subject to taxation the property of the plaintiff's meritorious association, but we have been unable, after careful research, to find any authority in our own decisions or those of the Supreme Court which holds that a bare statutory exemption, not contained in the legislative charter of a private corporation nor in an amendment thereto, and not expressly defined to be a contract between the State and the corporators, is irrepealable and not subject to recall at the option of the legislature.

We find the authorities are unanimous to the contrary; but if we be in error in this view the Supreme Court can set the decision right.

41 Plaintiff's injunction was therefore erroneously maintained and perpetuated.

Final Judgment.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *May* 11, 1891.

The court was duly opened pursuant to adjournment.

Present: Their honors Edward Bermudez, chief justice; Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, associate justices.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

GRAND LODGE OF THE STATE OF LOUISIANA OF FREE AND ACCEPTED MASONS
v.
CITY OF NEW ORLEANS. } No. 10774.

It is therefore ordered and decreed that the judgment appealed from be reversed, and it is further ordered that the plaintiff's injunction be dissolved at its costs in both courts.

GRAND LODGE OF THE STATE OF LA. F. & A. MASONS
v.
CITY OF NEW ORLEANS. } No. 10774.

Entered and filed Saturday, May 28, 1892.

On application for a rehearing.

We will not restate the case. It is sufficient to say that the eleemosynary character of the institution is not controverted by defendant's counsel.

That this court has decided that Masonry is a charitable institution, 36 A., 397; that defendant's propositions are:

That the act pleaded as exempting the property of plaintiff from taxation is not part of plaintiff's charter nor an amendment,
42 being a subsequent and independent act, in the nature of a favor or privilege, subject to repeal at any time.

That the action of the State exempting the property subsequent to its purchase by plaintiff cannot be held as the basis of a contract affecting the previously purchased property.

That article 207 of the constitution repealed the special exempting act pleaded.

That the terms of the constitution of 1868 with reference to exemption are different from those of the constitution of 1879.

The plaintiff in reply to those propositions earnestly contends that the questions have been decided in several cases, and that it is protected by the rule of *stare decisis*.

The St. Anna asylum, a corporation created for charitable purposes by legislative charter, owned property the revenues of which were applied to charitable purposes.

In a case which was tried against that institution it was decided that its revenues were not exempt from taxation.

On appeal to the Supreme Court of the United States the judgment was reversed. The court held that the exemption was made part of the charter and was one of the inducements offered for its acceptance and for making donations for the establishment of the institution.

Asylum *v.* New Orleans, Otto 105, p. 362.

Commencing with the leading Dartmouth College case, in which the legislature assumed to remodel the charter of that college, the doctrine has been affirmed and reaffirmed, as held in our original opinion, that such a charter is a contract which the State grants in expectation of benefits to the public which cannot be amended or repealed to the prejudice of the rights accorded.

There is no analogy between the pending case and the St. Anna Asylum case further than that they are both charitable insti-
43 tutions, and that each leased part of its property. In the former the act of exemption does not contain or import a consideration, in the latter the charter contained the elements of a contract protected by the Federal and State Constitutions.

The other cases referred to apply and the questions involved have

a bearing upon the issues in the case under consideration; we are therefore compelled to meet the principles laid down in them and to express our inability to reach the same conclusion.

In City of New Orleans *v.* Poydras Orphan Asylum, 33 A., 852, the defendant corporation was created by special acts of February, 1817. It was exempted from taxation under special acts of March, 1836. The case being similar to the pending case, the special exemption did not secure a vested right.

The taxes claimed were for the year 1870 and the case was decided under the constitution of 1868. The court held that all the property—that yielding a revenue to and that actually occupied by the Poydras asylum—was exempt from the payment of the said tax.

The principles upon which the decision rests will be referred to later in our decision.

The question of immunity from taxation of charitable institutions owning property other than that which they occupied received consideration in the case of The New Orleans Female Orphan Asylum against Houston Tax Collector, 37 A., 69. The taxes claimed were for certain years preceeding 1879.

The charter did not contain a clause exempting its property from taxation.

The exemption was secured under subsequent special legislation, as in the pending case.

Property yielding a revenue for the benefit of the asylum was decreed exempt from taxation.

We quote from the dissenting opinion in that case of the
44 late Justice Manning: "The whole subject came under review in the Poydras Asylum case, and was so extensively treated as to render a renewal of the discussion both unnecessary and tedious. I content myself with saying that the dissenting opinion of Mr. Justice Fenner in that case expressed my views, and for the reasons therein given I dissent from the majority opinion in this case. I recognize, however, the injustice that would be done by subjecting the plaintiff and other charitable institutions in *con simile casu* to the payment of taxes, while the Poydras asylum has been decreed exempt, and I shall in future adopt the ruling in that case as final." In another case referred to—The City *v.* Canal and Navigation Co., 36 A., 397—the plaintiff claimed that the special statute exempting property of the defendant from taxation was repealed by the constitution of 1879.

The court held:

"In the case of the Poydras asylum, 33 A., 850, we had occasion to consider a similar question of exemption, and we came to the conclusion that the constitution did not contemplate or produce the effect claimed."

The reasoning and the authorities collected in that case are applicable to the present one.

In a subsequent case, involving a question of the exemption of the said company, it was decided by this court that the said defend-

ant had assumed certain obligations and had thereby acquired a vested right which made a repeal of its exemption void.

City *v.* Canal Navigation Co., 44 A.

Two principles of interpretation and construction are set forth and followed in the above-mentioned decisions:

First. That article 207 of the constitution is prospective and not retrospective.

Second. That a special law is not repealed by a subsequent general law.

45 We have been slow in following a line of discussion which has resulted in our adopting the views herein expressed and in laying down a general rule of exemption we think should be followed. We recognize the soundness of the principle that generally no statute should have a retrospective effect. But the sovereign has a power we cannot disregard.

The limit of that power is expressed by the following: "Retrospective laws which do not impair the obligation of contracts or partake of the character of *ex port facta* laws are not condemmed or forbidden by any part of the Constitution of the United States."

Satterlee *v.* Motheusen, 2 Peters, 380.

In the pending case and those held to be anal-gous there is no contracted obligations and no vested right having the effect of withdrawing from the sovereign the power of repeal of special acts of exemption. From Dwanis, p. 165, on the same subject we quote:

"The rule of interpretations by which that construction of a statute is to be avoided which gives it a retrospective operation has little or no application in construing the organic law."

All trustworthy authorities agree in maintaining the principle that a special exemption law may be repealed if no vested right exist.

If the principles laid down in the decisions referred to should prevail, it would not be possible to repeal any special act of exemption although absolutely gratuitous.

The next question relates to the repeal of the special act by the subsequent general law.

The article (207 of the C.) contains a prohibition contrary to and irreconcilable with the special statutes pleaded by plaintiff.

The plaintiff collects a revenue from part of the property.

46 The proviso of said article prohibits the exemption of property used or leased for purposes of private or corporate profit or income. The maxim *leges posteriores priores contrarias abrigant* applies. From one of the cases referred to by plaintiff's counsel we quote:

"The old is abrogated by the new law only when the latter is couched in the negative or is so clearly repugnant as to imply a negative." 33 A., 850. The proviso in question is irreconcilable and repugnant and contains an absolute prohibition. It is direct and became a part of every statute granting immunity from the payment of taxes, in which no right is secured except that of ex-

emption at the will of the sover-ign. The special act exempting the plaintiff is only ineffective in so far as use is made of its property for the purpose of corporate profit or income.

The part of plaintiff's property not leased or used for corporate profit or income is exempt. In State *ex rel.* A. N. Bertel *et al. v.* Board of Assessors, 34 A., 574, the assessment was reduced by deducting the value of the property exempt.

A decree will be entered having in view a similar reduction. From the assessed value of the whole property described in plaintiff's petition must be deducted that part which is not subject to taxation, leaving the remainder subject to taxation.

On the application for a rehearing an oral argument was heard.

The case having been reconsidered on this application, our decree is amended without granting a rehearing & the case is remanded.

Final Judgment.

(Extract from the Minutes.)

NEW ORLEANS, SATURDAY, *May* 28, 1892.

The court was duly opened pursuant to adjournment.

Present: Their honors Charles E. Fenner, Lynn B. Wat-
47 kins, Samuel D. McEnery, Joseph A. Breaux, associate justices.

Absent: Edward Bermudez, chief justice.

His honor Mr. Justice Breaux pronounced the opinion and judgment of the court in the following case:

GRAND LODGE OF STATE OF LOUISIANA OF FREE AND ACCEPTED MASONS
v.
CITY OF NEW ORLEANS. } No. 10774.

On application for rehearing.

It is therefore ordered, adjudged, and decreed that our previous decree be amended by recognizing the exemption of that part of the property occupied by the grand and subordinate lodges of F. and A. Masons of La., and in other respects the demand is rejected.

The case is hereby remanded to the court *a qua*, with direction to hear evidence and ascertain what property is thus occupied and what property is rented or used for purposes of private or corporate profit or income and to pass upon and dec*ied* the relative values of that part of the property thus occupied by said Masons to that leased or used as aforesaid—*i. e.*, from the assessed value of the property, viz., $60,000, must be deducted the value of the property exempt as aforesaid. Judgment for taxes will be rendered, in compliance with law, on the remainder of the assessment for taxes due annually for the years claimed.

The defendant to pay the cost of appeal and the cost of the lower court already incurred.

Reasons for Judgment. Filed January 2nd, 1891.

THE GRAND LODGE OF THE STATE OF LOUISIANA F. & A. MASONS
vs.
THE CITY OF NEW ORLEANS.

No. 29919. C'v'l Dist. Court, Division "B."

48 The Grand Lodge of Louisiana complains of the act of defendant in having assessed for taxation for the years 1888, 1889, and 1890 a piece of real estate situated in the square bounded by St. Charles, Carondelet, Perdido, and Union streets, owned and used by it for charitable purposes. It claims that it is exempt from taxation.

The evidence proves the following facts:

The Grand Lodge was incorporated by an act of the legislature approved March the 18th, 1816. It is declared in said act to be the superintending lodge or power over the societies of Freemasons in this State, societies whose principles inculcate and whose object is the practice of charity and universal benevolence.

On the 11th day of May, 1853, it purchased the property assessed and described in the petition from James Robb for $55,000.00, of which $10,000.00 was paid cash and the balance it agreed to pay in two and three years from date of purchase.

In the act of sale, in order to induce the members and others to give their aid to the purchase, it was solemnly declared, in accordance with a resolution passed by the Grand Lodge, that the purchase was made for the purpose of creating a fund for charitable purposes, in relief of distressed members of the order, their wives, children, and families; and it pledged itself to devote the whole of the revenue, after deducting the necessary expenses of the property, to these objects.

The legislature of Louisiana, by an act approved March 15th, 1885, exempted from State and parish taxation said property so long as it is occupied as a Grand Lodge.

Upon the faith of the resolution of the Grand Lodge and the act of the legislature, the members of the societies subscribed the purchase price and paid for the property and building thereon.

From 1853 to the present time the whole of the revenue except
49 that used for insurance, repairs, and expenses of a like nature have been exclusively devoted to charitable purposes, as stated in the charter and act of sale.

The revenues thus devoted amounts to $111,446.03, averaging $3,012.05 yearly.

The plaintiff contends that the act exempting its property from taxation is in full force and effect, and prays that the assessment and levy of taxes thereon be decreed null and void.

The defence is that the property is not used exclusively for charitable purposes, and that the exemption act was repealed by the constitution of 1879.

While the property itself is not used exclusively for charitable

purposes, the revenues derived therefrom are so used. This is sufficient to exempt the property under the act. 105 U. S., p. 362.

When the legislature exempted the property of the Grand Lodge from taxation it entered into a contract never to tax it so long as it was used for charitable purposes. Property and money so used and applied are considered as assistance to the State.

They lessen the obligation of the government to provide for its poor, and to that extent they relieve the community from taxation.

These objects were deemed by the legislature to be beneficial to the State, and this benefit constitutes the consideration for the contract and no other is required. This exemption from taxation was part of the consideration of the contract by which the members of the order paid the large balance due for the property.

The State after entering into a contract of this nature cannot cancel it either by another act of the legislature or by a provision in a subsequent constitution. Both violate the tenth section of the first article of the Constitution of the United States, which prohibits any State from passing a law impairing the obligation of a contract.

The exemption act was not repealed by the State constitu-
50 tion of 1879, and it is in full force and effect. The property is not liable to taxation.

City *vs.* Poydras Asylum, 33 A. R., 850; St. Anna's Asylum N. O., 105 U. S., 362.

Home of the Friendless *vs.* Rouse, 8 Wall., 430; 34 A. R., 574; 36 A. R., 396.

Judgment for plaintiff as prayed for.

(Signed) FRED. D. KING, *Judge.*

Testimony of Lambert.

RICHARD LAMBERT, sworn and examined on behalf of plaintiff, says:

Direct examination.

By Mr. FELLOWS:

Q. Mr. Lambert, you are the grand secretary of the Grand Lodge, are you not?

A. Yes, sir.

Q. Have been connected with that business for several years?

A. Yes, sir.

Q. Will you state what proportion of that building not used by the Masonic fraternity was rented to outside parties—about what proportion?

A. Between two-thirds and three-fourths.

Q. Between two-thirds and three-fourths not rented?

A. Not rented.

Q. Two-thirds to three-fourths was occupied?

A. Was occupied by the fraternity.

Q. And the other third or fourth was rented?

A. Was rented.

Q. Would you state what the rental of that portion was for the years taken from the books?

A. I can——

Q. The gross rental.

51 A. For the years 1888, 1889, and 1890.

Q. What was the rental in 1886?

A. The rental in 1886, stores, outside parties, two thousand and sixty-three dollars.

Q. In 1887?

A. Twenty-two hundred dollars.

Q. In 1888?

A. Twenty-four hundred and seven dollars.

Q. In 1889?

A. Eleven hundred and ninety dollars.

Q. And in 1890?

A. Seven hundred and forty-two dollars.

Cross-examination.

By Mr. O'DONNELL:

Q. That was the rental from the old building, was it not?

A. Yes, sir; that is the rental of the old building.

By Mr. FELLOWS:

Q. When was the old building torn down?

A. In 1890 and 1891.

By Mr. O'DONNELL:

Q. The figures and the amounts that you have given to the judge is the total amount collected from that building during those years?

A. During those years; yes, sir.

Q. From outside parties?

A. Yes, sir.

Q. The order itself does not pay rent, do they?

A. No.

(Case closed.)

52 *Judgment. Rendered May 17th, 1893.*

THE GRAND LODGE OF LOUISIANA F. & A. MASONS *vs.* CITY OF NEW ORLEANS. } No. 29919. Division "B."

This case came on this day for trial—present: J. Q. A. Fellows, Esq., attorney for plaintiff; L. O'Donnell, Esq., attorney for defendants—when, after hearing pleadings, evidence, and counsel, the law and the evidence being in favor of defendants, and for the reasons orally assigned—

It is ordered, adjudged, and decreed that there be judgment in favor of defendants, The City of New Orleans, and against the plain-

tiffs, The Grand Lodge of Louisiana Free and Accepted Masons, from the city taxes due as follows:

For city tax of year 1888, on assessment of $20,000.00.

For city tax of year 1889, on assessment of ten thousand dollars ($10,000.00).

For city tax for the year 1890, on assessment of sixty-two hundred dollars ($6,200.00).

It is further ordered, adjudged, and decreed that upon paying the taxes due for said years at the rate of taxation as fixed in the city tax bills on the assessment found herein, the said tax lien and privileges be erased and the balance of said tax bills cancelled; plaintiff to pay all costs of this suit.

Judgment rendered May 11th, 1893.

Judgment signed May 17th, 1893.

(Signed) FRED. D. KING, *Judge.*

53 *Motion of Appeal.*

Extract from the Minutes of Wednesday, May 24th, 1893.

Present: Hon. Fred. D. King, judge.

THE GRAND LODGE OF THE STATE OF LOUISIANA F. & A. MASONS *vs.* THE CITY OF NEW ORLEANS. No. 29919. Division "B."

On motion of J. Q. A. Fellows and Chas. F. Buck, of counsel for plaintiff, and on suggesting that there is error in the judgment rendered herein on the 11th May, 1893, to the prejudice of plaintiff—

It is ordered that a suspensive appeal be allowed from said judgment, returnable to the supreme court on the first Monday of November, 1893, on plaintiff giving bond and security in the sum of two thousand dollars, conditioned as the law directs.

Bond of Appeal. Filed May 24th, 1893.

THE GRAND LODGE OF THE STATE OF LOUISIANA F. & A. MASONS *vs.* THE CITY OF NEW ORLEANS. No. 29919. Division "B."

Know all men by these presents that we, the Grand Lodge of the State of Louisiana, as principal, and A. W. Hyatt, as surety, are held and firmly bound unto the clerk of the civil district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of two thousand dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seal and dated in the city of New Orleans, on this — day of May, in the year of our Lord one thousand eight hundred and ninety-three.

54 Whereas the above-bounden Grand Lodge this day filed a motion for a suspensive appeal from a final judgment rendered against said Grand Lodge in the suit of The Grand Lodge of the State of Louisiana *vs.* The City of New Orleans, No. 29919 of the civil district court for the parish of Orleans, on the 11th day of May, 1893, and signed on the — day of May, 1893:

Now, the condition of the above obligation is such that the above-bound the Grand Lodge of the State of Louisiana shall prosecute said appeal and shall satisfy whatever judgment may be rendered against said Grand Lodge, or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise that the said surety shall be liable in its place.

(Signed) A. J. BRICE,
Deputy Grand Master for Grand Lodge.
State of Louisiana. [SEAL.]
A. W. HYATT. [SEAL.]

Original Opinion. Entered and Filed, New Orleans, Monday, April 9th, 1894.

Supreme Court.

THE GRAND LODGE OF LOUISIANA F. AND A. MASONS
v.
CITY OF NEW ORLEANS. } No. 11380.

By Mr. Justice Breaux.

Appeal from the civil district court for the parish of Orleans.

This case received careful consideration, and the principles of exemption enunciated in the decision remanding the case
55 to decide the relative value of the property occupied by the plaintiff to that leased or not in use of the Grand Lodge received the court's endorsement after mature deliberation.

The case was remanded to carry out the purpose just stated.

The extent of the exemption is defined.

The court *a qua* has correctly interpreted our decree and the appellant has no objection to urge against the amount allowed in the judgment appealed from, if the court's views regarding the exemption itself remains unchanged.

The plaintiff appeals from this judgment fixing the respective amounts and settling the value of the property upon which taxes are due in order to reiterate defenses heretofore decided.

On appeal, a reconsideration is asked by appellant of the identical questions heretofore decided.

In the previous suit the plaintiff claimed that its exemption from taxes under legislative grant had the force of a legislative contract, which could not be repealed or impaired by subsequent constitutional provision or statutory enactment.

On the part of the defendant it was pleaded that the exemption claimed conferred a mere gratuity, subject to repeal, and that this

exemption was repealed by article 207 of the State constitution, exempting property of charitable institutions not used or leased for purposes of private or corporate profit or income, inasmuch as part of plaintiff's property is leased for corporate revenue.

These issues were argued orally and by brief.

The effect of the article of the constitution 207 upon the exemption was the prominent issue.

This court's previous decision includes that point.

In answer to the proposition again argued, that charitable institutions, strictly speaking, can realize no private or corporate
56 profit or income, we can only reiterate in different language that this court many years since established a difference in the matter of taxation between the property of a charitable institution yielding a revenue and that property which the institution occupies for the purpose- of its charities. It was held that the former was subject to taxation and that the latter was exempt from taxation.

City of New Orleans *v.* Congregation Dispersed of Judah, 15 Annual, 389.

A similar question was considered in the case of City of New Orleans *v.* New Orleans Mechanics Society, 27 Annual, 437: The court held that as a charitable society the property actually used by itself for purpose- of charity would be exempt, but that the property not being used for the specific purpose expressed in the act of incorporation was not exempt from taxation.

The permissive article of the constitution of 1868, to the legislature to exempt property in the actual use of charitable institutions, has received judicial interpretation in a number of cases.

In two cases, however—City *v.* Poydras Asylum, 33 Annual, 850, and Orphan Asylum *v.* Tax Collector, 37 Annual, 70—a different view was expressed.

In one of these cases—the Poydras asylum—Judge Fenner, in his dissenting opinion, says: "I think that under the terms of the constitution and *under the jurisprudence of the courts established thereunder the exempting statute was unquestionably repealed so far as inconsistent with the rule of taxation provided by article 118.*" Italics ours.

The organ of the court in the Poydras Asylum case gave his concurrence to the principles enunciated in the case at bar.

Judge Manning was equally as emphatic in expressing his dissent in Orphan Asylum *v.* Tax Collector, 37 Annual, 70. As
57 maintaining uniform interpretation upon the subject of repeal by article 118, he cited New Orleans *v.* St. Patrick Hall, 28 Annual, 512, and others to the same effect.

The uniformity of interpretation was absolutely unbroken in 1879 and the limitation of exemption from taxation of property actually occupied by charitable institutions clearly announced.

In the face of the article of the constitution, 118, itself and of the decisions limiting the exemption, as before stated, the article of the present constitution was adopted, containing the following: "Pro-

vided the property so exempted, be not used or leased for purposes of private or corporate profit or income."

This proviso is as broad and comprehensive as was the article 118 of the constitution of 1868.

The plaintiff in the case at bar seeks to reopen the question of the effect of the proviso of article 207 of the constitution of 1879.

The repealing effect of the article was pleaded when the case was tried.

It was controverted from different points of view, and the repealing effect of the proviso was argued and reargued.

But waiving *argumenti gracia* the final disposition heretofore made of the case and reconsidering the proposition argued, we do not discover that too great a scope is given to the proviso.

The property of charitable institutions, leased and yielding a revenue, had never been construed, prior to the constitution of 1879, as part of the institution not subject to taxation.

It was property not free from taxation.

The present constitution has not materially changed the exemption in this respect from what it was under the preceding constitution.

58 Under both, charitable institutions have not in themselves elements of property as understood in commerce, unless they choose to invest in property and collect revenues.

But such property when they choose to invest property and collect revenues is not exempt from taxation.

Counsel for the plaintiff argue that the proviso in question cannot in the article of the constitution relate back to the word property in the third line before the word "used."

As to "public property" or other property and other property which cannot be within the scope of the proviso, we think it sufficient answer to state that the proviso may apply to part of the property exempt in the body of the article, and that it may be that it cannot in the nature of things be made a limitation in exempting other property.

Public property and its revenues are not subject to taxation and therefore not within the intendment of the proviso.

The State, for obvious reasons, does not impose taxes upon her property and upon its revenues.

This property would be exempt without any law on the subject.

It does not follow that the other institutions referred to are not within the scope of the article when they own property yielding a revenue. *Utile per inutile non vitiatur.*

Questions of the great good accomplished by charitable and other similar institutions, however much they appeal to our sympathies, should have no weight in determining the meaning of an article of the constitution.

A rigid adherence to the fundamental law recommends itself as highly proper in enforcing any of its provisions.

59 *Final Judgment.*

(Extract from the minutes.)

NEW ORLEANS, MONDAY, *April 9th*, 1894.

The court was duly opened pursuant to adjournment.

Presene: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

His honor Mr. Justice Breaux pronounced the opinion and judgment of the court in the following case:

THE GRAND LODGE OF LOUISIANA F. AND A. MASONS
v.
CITY OF NEW ORLEANS. } No. 11380.

It is therefore ordered, adjudged, and decreed that the judgment appealed from be, and the same is hereby, affirmed at appellant's costs.

Supreme Court of Louisiana.

THE GRAND LODGE OF LOUISIANA F. & A. MASONS
v.
THE CITY OF NEW ORLEANS *et al.* } No. 10774.

To the honorable the chief justice of the supreme court of the State of Louisiana:

The petition of The Grand Lodge of Louisiana F. & A. Masons, plaintiff and appellee in the above entitled and numbered cause, and cast in the final decree of this honorable court in and between the same parties, in which your petitioner was appellant, No. 11388, respectfully represents that it is informed and believes that there is error to its prejudice in the judgments rendered herein in
60 May, 1892, in suit between same parties, then numbered 10774, and on the 9th day of April 1894, in suit numbered 11388, between said plaintiff, your petitioner, and the City of New Orleans, which judgment became final and executory *in* April 17th, 1894, and petitioner is desirous of obtaining a writ of error to remove these causes and the said judgment of this court thereon to the honorable the Supreme Court of the United States, which is vested with jurisdiction over this cause by reason of the fact that there was drawn in question in this case the validity of a certain act of the legislature of this State, and especially of article 207 of the constitution of the State of Louisiana, adopted in 1879, in reference to the subject-matter in this litigation, which law, and especially said article 207 of the constitution of the State of Louisiana, is alleged to be in violation of solemn contract obligations entered into by the legislature of the State of Louisiana between the petitioner and said State of Louisiana, and by which the said City of New Orleans, defendant in this suit, is bound, being act No. 225 of the acts of the legislature passed on the 15th day of March, 1855, by which the

property of petitioner at the corner of Perdido and St. Charles streets was exempted from taxation, and which act the supreme court of Louisiana held was repealed, especially by said article 207 of the constitution of the State of Louisiana of 1879, and that the exemption contained in said act No. 225 did not form nor was in the nature of a contract, and was capable of repeal by the State without a violation of the Constitution of the United States, especially of paragraph 1, section 10, of article 1 of the said constitution, and that said act 225 of 1855 did not form a contract; that said article 207 of the constitution of Louisiana, which was invoked as repealing the said article 225 of the legislature of 1855, as above set forth, and as repealing said exemption, was in conflict with and direct violation of said section 10 of article one of the Constitution of the United States.

61 Wherefore petitioner prays that a writ of error be allowed it from the final judgments and decrees of this honorable court in records and suits Nos. 10774 and 11388, and that the same be returnable to the honorable the Supreme Court of the United States at its next term, according to law, and that said writ of error operate — a supersedeas upon petitioner's giving bond in such sum as the court may fix, conditioned according to law; and petitioner further prays that the City of New Orleans, through its mayor, be cited to answer said writ of error in accordance with law and practice in such case made and provided; and, as in duty bound, petitioner will ever pray, etc.

JNO. Q. A. FELLOWS AND
CHAS. F. BUCK, *Of Counsel.*

Order.

Let, as within prayed for, the writ of error be allowed, returnable within thirty days and according to law to the Supreme Court of the United States, and that said writ operate as a supersedeas on plaintiffs in error executing their bond, with good and solvent security, in the sum of three thousand dollars, conditioned as the law directs.

New Orleans, 26 April, 1894.

FRANCIS T. NICHOLLS,
Chief Justice.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, being a judgment rendered by said court in suits or record No. 10774 and a judg-

62 ment rendered in record No. 11388, final and executory, on April 16, 1894, and having been rendered on April 9, 1894, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between

The Grand Lodge of Louisiana F. & A. Masons and The City of New Orleans, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statue of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Grand Lodge of the State of Louisiana F. & A. Masons, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, No. 10774 and 11388, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty (30) days from date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of
63 the said Supreme Court, the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-four.

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
FRANCIS T. NICHOLLS,
Chief Justice of La.

Know all men by these presents that we, the Grand Lodge of Louisiana F. & A. Masons, through Geo. H. Packwood, grand master, as principal, and A. W. Hyatt, as surety, are held and firmly bound unto the City of New Orleans in the full and just sum of three thousand $\frac{00}{100}$ dollars, to be paid to the said City of New Orleans, her certain attorney, executors, administrators, or assign-; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of April, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at the supreme court of the State of Louisiana, holding sessions in and for the said State of Louisiana at the City of New Orleans, in two suits depending in said supreme court, wherein said Grand Lodge of Louisiana F. & A. Masons is plaintiff

and The City of New Orleans, defendant, judgment in suits numbered 10774 and 11388 of the docket of said supreme court was rendered against plaintiff and in favor of defendant, and the said plaintiff, The Grand Lodge of Louisiana F. & A. Masons, having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgments in the aforesaid suits, and a citation directed to the said City of New
64 Orleans, citing and admonoshing her to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Grand Lodge of Louisiana F. & A. Masons shall prosecute her writs to effect and answer all damages and cost if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

GEO. H. PACKWOOD, *G. M.* [L. S.]
A. W. HYATT. [L. S.]
—— ——. [L. S.]

Sealed and delivered in the presence of—
—— ——.

Approved 26 April, 1894.
FRANCIS T. NICHOLLS,
Chief Justice.

UNITED STATES OF AMERICA, }
Eastern District of Louisiana. } *ss:*

Personally appeared Arthur William Hyatt, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the parish of Orleans and in the eastern district of Louisiana, and is worth the full sum of three thousand dollars over and above all his debts and liabilities and property exempt from execution.

A. W. HYATT.

Subscribed and sworn before me this 26th day of April, 1894.
FRED. ADOLPH, *Not. Pub.*

65 UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, at the city of New Orleans, do hereby certify that the foregoing sixty-four pages contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of Orleans in a certain suit wherein The Grand Lodge of Louisiana F. & A. Masons was plaintiff and The City of New Orleans defendant, and also of all the proceedings had in this honorable court on the appeal taken by said defendant; which appeal is now on the files thereof under No. —.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this twenty-first day of May, anno Domini 1894, and in the one hundred and eighteenth year of the Independence of the U. S. of America.

Seal Supreme Court of the State of Louisiana.

T. McC. HYMAN, *Clerk.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court of the State of Louisiana, at the city of New Orleans; that the signature of Thomas
66 McCabe Hyman to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 21st day of May, anno Domini 1894, and in the one hundred and eighteenth year of the Independence of the U. S. of America.

Seal Supreme Court of the State of Louisiana.

FRANCIS T. NICHOLLS,
Chief Justice

67 Supreme Court.

GRAND LODGE OF THE STATE OF LA. F. & A. M. }
vs. } No.—.
THE CITY OF NEW ORLEANS. }

It is hereby agreed that a certificate by the clerk of the supreme court to the effect that the record as prepared contains *is* a true and correct copy of proceedings had, so far as the documents, pleadings in it are concerned, shall be deemed sufficient.

And it is agreed that either party to the suit shall have the right to supplement the transcript should anything deemed necessary have been omitted; and plaintiff in error, through counsel, obligates itself, at its own expense, to supply and have printed for the Supreme Court of the United States and part of the record now omitted that may be deemed necessary by counsel for def'd't in error.

E. A. O. SULLIVAN,
City Att'y.

J. Q. A. FELLOWS AND
CHAS. F. BUCK,
For P'ff in Error.

May 21, 1894.
6—715

[Endorsed:] Supreme Court of La. Filed May 21, 1894. T. McC. Hyman, clerk.

68 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the City of New Orleans, through its mayor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein The Grand Lodge of Louisiana F. & A. Masons is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Grand Lodge of Louisiana F. & A. Masons, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Custice of the Supreme Court of the United States, this 26th day of April, in the year of our Lord one thousand eight hundred and ninety-four.

Seal Supreme Court of the State of Louisiana.

FRANCIS P. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

69 [Endorsed:] R. 29919. City of New Orleans, through its mayor. Supreme court of the State of Louisiana. No. 10774, 11388. Grand Lodge of Louisiana F. & A. Masons *vs.* The City of New Orleans. Citation.

Sheriff's Return.

Received Tuesday, May 1, 1894, and on the same day, month, and year I served a copy of the within citation on The City of New Orleans, defendant in error, by personal service on John Fitzpatrick, its mayor.

Returned same day.

Sheriff's fee, 50c.

JAMES DUIGNAN, *D'y Sh'ff.*

Personally came and appeared James Duignan, deputy civil sheriff, well known to me, who, being duly sworn, deposed and said that the above statement of facts is true and correct.

JAMES DUIGNAN, *D'y Sh'ff.*

Sworn to and subscribed before me this 11th day of May, 1894.

[Seal P. Alphonse Rabouin, Notary Public, State of La., Parish of Orleans.]

P. ALPH. RABOUIN, *Not. Pub.*

70 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the records and proceedings, as also in the rendition of the judgments of a plea which is in the said court, being a judgment rendered by same court in suits or record No. 10774, and a judgment rendered in record No. 11388, final and executory, on April 16, having been rendered on April 9th, 1894, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suits between The Grand Lodge of Louisiana F. & A. Masons and The City of New Orleans, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the con-
71 struction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error happened, to the great damage of the said Grand Lodge of the State of Louisiana F. & A. Masons, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, No. 10774 and 11388, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty (30) days from date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-four.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
FRANCIS T. NICHOLLS,
Chief Justice of La.

[Endorsed:] Nos. 10774, 11388. Supreme court of Louisiana. Grand Lodge of the State of Louisiana F. &. A. M. *versus* The City of New Orleans. Writ of error. Copy of a writ of error lodged in the clerk's office of the supreme court of Louisiana. Copy in pursuance of the statute in such cases made and provided this 26th day of April, one thousand eight hundred and ninety-four. J. Q. A. Fellows & Chas. F. Buck, attorneys of plaintiff in error.

Endorsed on cover: Case No. 15,599. Louisiana supreme court. Term No., 715. The Grand Lodge of the State of Louisiana F. & A. Masons, plaintiff in error, *vs.* The City of New Orleans. Filed May 31st, 1894.

SUPREME COURT, U. S.
FILED
JAN 22 1896
JAMES H. MCKENNEY,
CLERK

Supreme Court of the United States,

OCTOBER TERM—1894.

No. ~~715~~ 383.

THE GRAND LODGE OF THE STATE OF LOUISIANA, F. AND A. MASONS, PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief of Plaintiff.

J. Q. A. FELLOWS, and
CHAS. F. BUCK,
Attorneys for Plaintiff in Error.

A. W. HYATT STATIONERY M'F'G CO., LTD., 73 CAMP ST.—67,443.

Supreme Court of the United States,

OCTOBER TERM—1894.

No. 715.

THE GRAND LODGE OF THE STATE OF LOUISIANA, F. AND A. MASONS, PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief of Plaintiff.

I.

STATEMENT OF THE CASE.

1. The plaintiff is an eleemosynary institution, incorporated as such by the State of Louisiana in 1816 (Record, pages 11, 12 and 14), and recognized as such by the Supreme Court of Louisiana, in the opinion in this case. Record, pages 18 and 26.

2. As a foundation for a permanent charity fund, the plaintiff, on 4th February, 1853, purchased property at the corner of St. Charles and Perdido streets, in the city of New Orleans, in the deed of which was embodied the purposes of the purchase and the perpetual destination of the revenues to charitable purposes. Record, pages 5 and 6.

3. This purchase was made for $10,000 cash and $45,000 in three (3) annual payments. Record, page 5.

It was found that default would follow in the payments, and the charity endowment be lost, although many thousand dollars had been contributed to that end. Record, page 14.

4. In view of the object of this endowment and to encourage further contributions, by which it could be saved and become permanent, the legislature, in 1855, passed an act which exempted the property from taxation. Record, page 13.

5. Under the encouragement given by this exemption, and relying on the assurance that the property would thereafter be exempt from taxation, many thousand dollars in excess of the usual dues and fees were voluntarily contributed by members of the Order to the charity fund, and much relief was in the meantime granted in times of pestilence, in anticipation of the final payment of the property, and all its net revenues, since its final payment, have been expended in charity. Record, pages 14 and 15.

6. The receipts and disbursements, from the date of purchase in 1853 to end of 1889, are shown, giving upwards of $90,000 expended for charity and the balance paid on the purchase price, or upwards of $30,000 for charity from this endowment alone. Record, page 8.

7. All these conditions of the endowment, embraced in the act of purchase, were embodied in the regulations of the plaintiff, the Grand Lodge. Record, pages 9 to 11.

8. Notwithstanding the foregoing, the city of New Orleans levied a tax upon the property on an assessed value of $60,000 for the years 1888, 1889 and 1890, and proceeded to enforce the payment of the same by advertising the property for sale. This attempted sale the plaintiff enjoined on the ground that the property was exempt from taxation, and that an attempt to enforce the payment of taxes under any law of the State impaired the obligation of a contract and was in violation of Section 10

of Article 1 of the Constitution of the United States. Record, pages 1 and 2.

9. The city answered by a general denial (Record, page 6), and after trial there was judgment in the District Court perpetuating the injunction, and from which judgment the city appealed. Record, page 16.

10. The Supreme Court of Louisiana held that under Act No. 225 of 1855 there was no contract on the part of the State, exempting the property from taxation beyond the pleasure of the State, and that the Constitution of the State of 1879, Article 207, repealed the Act No. 225 of 1855, exempting the property from taxation (Record, pages 17 to 29), and referring us to this Court. See last paragraph of opinion. Record, page 25.

11. The case, after a rehearing, was remanded to the lower court, to fix the value of a portion held to be exempt, and on final judgment on that question, not pertinent to this issue, and after a repeated, but unsuccessful, effort on a second appeal, this writ of error was taken. Record, pages 36 to 38.

12. The Supreme Court of Louisiana held that Article 225 of 1855, of the Legislature of Louisiana, exempting this property from taxation, was no contract, and was therefore subject to repeal, which was done by Art. 207 of the Constitution of Louisiana of 1879, without coming in conflict with Section 10 of Article 1 of the Constitution of the United States—which opinion of the Court of last resort the plaintiff contends to be an error and subject to revision by the Supreme Court of the United States, under Section 10 of Article 1 of the Constitution of the United States.

II.

Points and Authorities.

1. The exemption from taxation, by Act No. 225 of 1855 of the Legislature of Louisiana, is a contract for a valid consideration between the State of Louisiana and the Grand Lodge of F. and A. Masons, and that any attempt to tax the property ex-

empted, so long as the conditions exist, impairs the obligation of the contract.

Asylum vs. New Orleans, 105 U. S. Rep. 362.
Home of the Friendless vs. Rouse, 8 Wall. 430.
Washington University vs. Rouse, 8 Wall. 439.
34 La. An. Rep. 574.

2. There is no necessity of looking for the consideration outside the objects for which the corporation was created. These objects are decreed by the legislature to be beneficial and are sufficient consideration for the contract.

105 U. S. Rep. 362.
8 Wall. 430 and 439.
City of New Orleans vs. Poydras Orphan Asylum, 33 La. An. Rep. 850.
City of New Orleans vs. Navigation Company, 36 La. An. Rep. 396.
Orphan Asylum vs. Tax Collector, 37 La. An. Rep. 68.

3. There is no necessity to look for the consideration of a legislative contract outside of the objects for which the corporation was created. These objects were deemed by the Legislature to be beneficial to the community, and this benefit constitutes the consideration for the contract, and no other is required to support it.

Home of the Friendless vs. Rouse, 8 Wall. 437.
Canal Company vs. City, 44 La. An. 395.

III.

Argument.

1. In the preamble to the Act of Incorporation of the plaintiff in 1816, it is stated that whereas * * * * * it, the Grand Lodge is "founded on the ancient usages of their society, the principles of which are charity and universal benevolence; to the end, therefore, that charitable institutions may be promoted; Section 1. Be it enacted," etc. Record, page 12.

In the deed by which the property, herein claimed to be

exempt from taxation, on February 4th, 1853, was incorporated the following: "and it is hereby declared by the said Grand Master, that at the meeting of the said Grand Lodge, hereinbefore referred to (that authorizing the purchase), a resolution was adopted which he was directed to cause to be incorporated into the present deed of conveyance: * * * . Be it resolved, that in order to fully satisfy the minds of our brethren and others who may be disposed to give their aid to the purchase of the Grand Lodge Hall, this Grand Lodge does now solemnly declare and proclaim that said purchase is to be made for the purpose and object of creating a fund for charitable purposes, in the relief of worthy distressed members of the Order, their wives, children and families; and this Grand Lodge solemnly pledges itself that, *so soon as the said property shall be paid for*, the whole of the revenue which may be derived from it, after deducting necessary and unavoidable expenses on its account shall be devoted to those objects; and it further pledges itself that should it ever be expedient to sell said property the funds thereof shall be reinvested as a permanent charity fund and the revenues thereof applied in the same manner, and the Grand Master is hereby directed to incorporate this resolution in the deed of sale of said property as the solemn pledge and contract of this Grand Lodge with those who have contributed or may hereafter contribute to the purchase thereof." Record, pages 5 and 6.

The sale was made for $55,000, of which $10,000 was paid in cash, and the balance ($45,000), in three notes, each for $15,000, dated 1st January, 1853, payable at one, two or three years from date, with interest and secured by mortgage upon the property. Record, page 5.

Provision was made for carrying out this trust and charity fund by the creation of a "Board of Directors of the Grand Lodge Hall," with power to administer, subject to the resolution incorporated in the act of purchase, and by which it was provided:

"Section 93. All rents and revenues of the property and all donations, together with all the surplus revenues proper of the Grand Lodge, to be applied to the payment of the debts contracted on account of the Grand Lodge Hall until the same be fully extinguished, etc.

"Sec. 94. So soon as the property shall be paid for, the whole revenues which may be derived from it, after the payment of the necessary and unavoidable expenses on its account shall be devoted exclusively to charitable purposes," etc.

It was proved by the testimony of two witnesses, fully competent to testify, that "Masonic charity is not confined to the members of the Order, but from the beginning, while the initiate is charged to contribute to the wants of a brother, as far as his necessities may require and the means of the giver will permit, he is enjoined not to confine his relief to the brethren of the Order, but that whenever he should find any one in necessitous circumstances, to contribute to his relief as he would to that of a brother."

"Fees, dues and contributions are exacted from each member of the Order for necessary and ordinary expenses of the Lodge and to create a fund for the purposes of charity, to be distributed as occasion might require, or to invest as a permanent charity fund, the revenues of which to be used for charitable purposes."

"The distribution of their charity funds is purely eleemosynary. Those funds are not distributed as in most secret societies. No one, however large the fund on hand, has the right, in case of sickness or death, to any certain fixed sum as benefits. It is not a life or health insurance association or benefit society in any form or nature whatsoever. Only those who are actually in want can call upon the charity funds of the Order, and then not for any fixed sum, but only for such assistance as the necessities of the case may require and the means at disposal may permit. * * * All its funds in excess of the necessary actual current expenses of the organization are devoted to charitable uses." Record, page 14.

The second note for the purchase price, due January 1, 1854, having been defaulted, or extended, and in view of the taxes yearly levied on the property, and the inability of the promoters of the charity fund endowment to raise by further contributions the necessary funds to liquidate the debt and secure the endowment, and especially in view of the yellow fever epidemics of 1853 and 1854, which nearly decimated the inhabitants of New Orleans, and all the facts as hereinafter detailed being well known, the Legislature of Louisiana, in 1855, enacted the following:

"No. 225, an Act to exempt from taxation the Hall of the Grand Lodge of F. and A. Masons of the State of Louisiana:

"Be it enacted, etc., That the building situated at the corner of St. Charles and Perdido streets in the City of New Orleans, and known as 'the Hall of the Grand Lodge of F. and A. Masons of the State of Louisiana,' shall be exempt from State and

Parish taxation, so long as it is occupied as the Grand Lodge of the F. and A. Masons." Approved March 15th, 1855. Record, page 13.

Under this guaranty and exemption, in the words of the witnesses who testified in the case, and whose capacity is shown by the Record:

"Many thousand dollars in excess of the usual dues and fees have been contributed by the members of the Order in this State (and elsewhere) to the (this) charity fund. All the receipts of the Grand Lodge since 1853, in excess of its necessary expenses, amounting to several thousand dollars, and many thousand dollars in the shape of special annual taxes and voluntary contributions have been added to this fund and used for the payment of the purchase price of the property corner of St. Charles and Perdido streets, that, as soon as paid for, its net revenues could be made available for the charities of the Order and as contemplated and expressed in the act of purchase."

And these witnesses further say: that "in the meantime, anticipating the time when the property would be paid for and the net revenues become available, large sums have been expended in charity, thus delaying the final completion of the payment of the property in times of pestilence (and we have had, since the purchase of the property, six epidemics of yellow fever in New Orleans, and one in Shreveport, Memphis and Florida), two disastrous overflows of the Mississippi river, the Johnstown disaster and the fires in Michigan and Chicago, and the earthquake at Charleston, all calling for and receiving from the charity funds extensive assistance and aid." Record, page 14.

Such was, in part, the considerations upon which the legislature acted in passing the law of exemption. It is submitted that the consideration, even it be necessary to inquire into it, was more than ample for the benefit granted. It would seem certain that without the exemption and the supposition that it was to be perpetual, contributions sufficient to pay off the $30,000 and accumulated interest would never have been made and the property would have been sold under foreclosure, and this large contemplated endowment of a charity fund have lapsed, and the funds already contributed lost.

In the words of Mr. Justice Davis: "It can readily be seen that a charity of this kind would be of great benefit to the people of St. Louis [Louisiana] and that the Legislature of the State

would naturally be desirous of using all proper means to promote it. The purposes to be attained by such a charity are usually beyond the ability of individual effort, and require an association of persons who will themselves contribute pecuniary aid, and are willing to become solicitors for the contributions of others. Usually, the initiation of such an enterprise is in the hands of a few persons who need to be clothed with more than ordinary powers in order to obtain the successful co-operation of others. In no way could this co-operation be better secured than by conferring on the corporators the authority to say to the benevolent people of St. Louis [New Orleans] that their donations in money or bonds, for the relief of the suffering female poor of the city, would be held by the institution undiminished by taxation."

"It was doubtless under the influence of those considerations, and because every government wishes to encourage benevolent enterprises, that the legislature granted the charter for the Home of the Friendless, and said to the charitable persons engaged in this business, that if they would organize the society and conduct its affairs, would give themselves and solicit others to give for the common purpose, 'that the property of the corporation shall be exempt from taxation.'" Home of the Friendless vs. Rouse, 8 Wall. 436.

The Court says, further (same case, page 437):

"It is objected that there is no consideration stated in the act for the release from taxation, which, it is claimed, is necessary in order to uphold the contract. But this is a mistaken view of the law on this subject.

"There is no necessity of looking for the consideration for a legislative contract outside of the objects for which the corporation was created. Those objects were deemed by the legislature to be beneficial to the community, and this benefit constitutes the consideration for the contract, and no other is required to support it."

Again: "It was undoubtedly the purpose of the legislature to grant to the corporation a valuable franchise, and it is easy to see that the franchise would be comparatively of little value if the legislature, without taking direct action on the subject, could, at its will, remove the power of taxation."

And in the case of the Washington University vs. Rouse, Mr. Justice Davis, also the organ of the Court, said:

"It is enough for the purposes of this suit to say, that so long as the corporation uses its property to support the educational establishments for which it was organized, it does not forfeit its right not to be taxed under the contract which the State made with it."

8 Wall. 441.

Asylum vs. New Orleans, 105 U. S. 362.

We might rest the case here, as being almost upon all forms with the *Home of the Friendless, 8 Wall. 430,* and *Asylum vs. New Orleans, 105 U. S. 362,* but as the opinions in the case by the Supreme Court of Louisiana based on the briefs of the defendant, raises other points incidental to the question of contract *vel non*, we will pursue the inquiry into those incidental questions.

2. It is held *in arguendo* in the opinion of the Supreme Court of Louisiana in this case, that this exemption not being in the original charter, but by a special act of exemption, passed long subsequent thereto, and subsequent to the purchase of the property exempted, it (Act 225 of 1855) did not thereby possess the essentials of a contract, and therefore was subject to repeal.

The Grand Lodge (present plaintiff) was incorporated as an eleemosynary institution in 1816. Record, page 11.

The Poydras Asylum, another eleemosynary institution, was created also by legislative act, in 1817. See Acts of Louisiana, 1817, page 192.

The New Orleans Female Orphan Asylum was also created by special legislative act as an eleemosynary institution in 1843. See acts of Louisiana, 1843, page 90.

The Poydras Asylum claimed exemption of its property by a special act passed in 1836. See Acts of 1836, page 135.

The Female Orphan Society also claimed that its property was exempt from taxation by a special act, in 1844. See Acts of Louisiana, of 1844, page 64.

The Poydras Asylum was decreed as exempt by the Supreme Court, in 33 La. An. 850.

The Female Orphan Society was declared exempt under its special act, 37 La. An. 68.

The Grand Lodge property was exempted by a special act, also of one section in 1855.

But the Court says the decisions of the Supreme Court in the

cases of the asylums were based, not on the irrepealability of the acts of exemption, but because the Constitution of Louisiana of 1868, Art. 118, and the legislation thereunder, did not repeal the law of exemption, and that the Constitution of 1879 did repeal the exemption, by Act of 1855, of the property of plaintiff, which was no contract, not being in the original charter, but by a bold act of exemption of one section; that that exemption was a temporary favor and subject to repeal at any time, and that the Constitution of 1879, Art. 207, did repeal it.

It follows, that the exemptions to all these charitable (eleemosynary) institutions, form no contract, and therefore are subject to repeal, and that the Constitution of 1879 did repeal the laws of their exemption.

There seems to be no authority for the distinction made between cases of exemption by special act and by the original charter.

The only intimation of such a doctrine is claimed to be found in Asylum vs. New Orleans, 105 U. S., p. 368, where, commenting upon the cases in 22 Wall. 527, and 93 U. S. 595, this Court says: "In the first place, the Constitutions of Michigan and Wisconsin, in which States these cases arose, reserved to their legislatures, respectively, the power to alter, amend and repeal charters of incorporation. In the next place, in these cases, the exemption was held to be gratuitous on the part of the State, no consideration passing therefor from the companies. It was no part of their charters of incorporation, and, therefore, formed no consideration for their acceptance, whereas, in the present case (Asylum vs. New Orleans), the exemption was expressed in the charter itself, and was one of the inducements offered for its acceptance, *and for making donations for the establishment of the institution.*"

It will be seen that the point contended for, as established by the foregoing, was only *in arguendo*, as to the inapplicability of the two cases cited, to the case under consideration and established no such principle of law as contended for.

In the instant case, the plaintiff is an eleemosynary institution, and not a railway company, as in the three cases; its object, as was that of the St. Anna's Asylum, then under considera-

tion, and as are the Poydras and Female Orphan Asylum, was eleemosynary.

The Court (Asylum vs. New Orleans, page 368), after referring to *Home of the Friendless vs. Rouse*, (8 Wallace, 430), as almost on all fours with the present case, says, "We might go back to the case of *Dartmouth College vs. Woodward*, and the cases and since decided, and review all the reasons on which they were grounded; we might dilate on the legislative reasons for granting immunity from taxes to such charitable institutions as that of the plaintiff in error, prominent among which would doubtless be the fact that the support and maintenance extended to the objects of the charity *relieves the State from a burden which would involve a much larger amount of taxation than that which it waives by granting the exemption*. But such a review would be but a repetition of what has been said before, and much of it would be out of place."

In the instant case, while the charter contains no clause of exemption, any more than do the charters of the Poydras, the Female Orphan and the Elizabeth Asylums, all exempt by special acts of legislation, yet the Grand Lodge had attempted to create a permanent fund for charity by the purchase of property herein sought to be taxed and was about to fail in the undertaking, when, substantially, the legislature said, by the Act of 1855, to the promoters of that undertaking, "If they would give themselves and solicit others to give for the common purpose" (in the words of the opinion in 8 Wall. 436), "and *thus secure a permanent charity fund*—tax yourselves and your associates and not permit this investment, thus begun, to lapse, the property shall be exempt from taxation." This is as much a contract between the State and the contributors to that fund to the Grand Lodge, as it would be if contained in the charter of 1846. In fact, it is more so, *for it was to encourage and secure the establishment of this charity.*

But, says the Supreme Court: "The case of *Rector, etc., of Christ Church vs. County of Philadelphia, 24 Howard, 300*, may be taken as a leading and forcibly expressed opinion thereon." It can hardly be called a leading case, for no other case follows it. In the statement of the reporter he says "the argument was,

whether the reason given for exempting the property was a legal consideration of a contract or only a motive alleged for passing the laws." The facts of the case are reported as stated in the opinion of the Court. The Court says "that in 1833 the Legislature of Pennsylvania passed an act which recited that Christ Church Hospital in the city of Philadelphia had for many years afforded an asylum to numerous poor and distressed widows, who would probably also have become a public charge; and it being represented that in consequence of the decay of the buildings of the hospital estate, and the increasing burden of taxes, its means are curtailed and its usefulness limited, they enacted that the real property, including ground rents, etc., should be free from taxes; * * * that in 1851 this law was repealed and after adverse decisions the case was brought by writ of error to the Supreme Court of the United States on the ground that the act of exemption was a contract."

The Court says: "The inducements that moved the legislature to concede the favor contained in the act of 1833 are special, and were probably temporary in their operation; the usefulness of the corporation had been *curtailed* in consequence of the decay of their buildings and the burden of taxes. It may be supposed that in eighteen years the buildings would be renovated, and the corporation would be able afterwards to sustain some share of the taxation of the State. The Act of 1851 embodies the sense of the legislature to this effect."

This is the first (and only) case of the Supreme Court of the United States, where the doctrine contended for is even intimated, and giving the whole force contended for it is far from being applicable to the instant case. In the case in 24 Howard, the property was fully in possession and ownership and only the buildings were in decay, and the grant was to enable them to be repaired, and the presumption is that in eighteen years this had been done. In the instant case, an endowment was attempting to be established requiring large donations to make it a success. The exemption was made in order to induce persons charitably disposed to make these donations and secure the investment, and even a doubt of the success of this exemption is expressed in the act itself and the fear indicated that the property would be foreclosed and sold for its debt, and thus pass out of the hands of the Grand Lodge by the exemption

in the act, that the exemption should cease whenever it (the property) should cease to be occupied by the Grand Lodge.

In the case of Christ Church Hospital, the relief was probably temporary, and these temporary troubles were supposed to have been surmounted in eighteen years. In the case at bar, the exemption was for the purpose of *establishing* a permanent and perpetual charity fund, then in embryo, and of very doubtful success, and to induce subscriptions, donations and self-imposed taxation to secure it certainly was an inducement to the contributors, under the pledge of the State, that if these efforts proved successful, the property should thereafter be free from taxation.

In the case of 24 Howard, as well as 12 Mass., upon which it was based, with many others, cited in the *Home of the Friendless vs. Rouse*, to not one of them was weight given, even by comment, unless it be in the following:

"There is no necessity of looking for the consideration for a legislative contract outside of the objects for which the corporation was created. These objects were deemed by the legislature to be beneficial to the community, and this benefit constitutes the consideration for the contract, and no other is required to support it. This has been the well-settled doctrine of this Court on this subject since the case of Dartmouth College vs. Woodward."

This is in reply to the first point in the brief of the defendant, in the case then under consideration, and to the authorities there cited—(8 Wall. 433)—namely, 24 Howard, 300; 10 Howard, 511, 535; 12 Mass. 443; 4 Pet. 561.

Nor in *Washington University vs. Rouse*, *8 Wall. 439*, is there any citation of or reference to authorities other than as referring to the previous case of *Home of the Friendless*.

The next case, that of *Tomlinson vs. Jessup*, *15 Wall. 454*, was a railroad case.

As were also the cases in 18, 20 and 21 Wallace, and decided on special grounds not applicable to this question.

In the *Asylum vs. New Orleans*, *105 U. S. 362*, the doctrine we contend for is treated as settled by the case of *Home of the Friend-*

less, and as to hardly admit of further discussion. See opinion *in extenso*.

3. There was no law of the State nor any provision in the Constitution of the State of Louisiana, in force in 1855, which limited the legislature in its powers to make a contract of exemption from taxation which would be prohibitive of its repeal by subsequent legislation and therefore be protected by the tenth section of Article 1 of the Constitution of the United States.

In many of the cases cited in the learned opinions of the Supreme Court of Louisiana and in argument against the pretensions of this plaintiff, there were such provisions of law, by statute or in the constitutions, limiting the power of one legislature to bind subsequent legislatures, in the repeal of these exemptions. Hence all such cases are inapplicable to the case before the Court.

Again, most of the authorities are decisions of State courts, on the question at bar, and not binding upon or of authority in this Court, and notably the case in 12 Mass; and in the Bank Exemption cases from Ohio, all overruled or reversed by this Court.

In *Tomlinson vs. Jessup*, *15 Wall. 454*, where, by a law of 1841 of the State of South Carolina, any change was authorized by any subsequent legislature in any charter or amendment to a charter, became part of the charter granted and of the contract under it, the Court said: "It is a provision intended to preserve State control over its contracts with the corporators, *which, without that provision, would be irrepealable and protected from any measures affecting its obligations.*

"There is no subject over which it is of greater moment than for the State to preserve its power of taxation. It has nevertheless been held by this Court, not, however, without occasional earnest dissent from a minority, that the power of taxation, *over particular parcels of property*, or over property of particular persons or corporations, may be surrendered by one legislative body, so as to bind its successors and the State. It was so adjudged at an early day in *New Jersey vs. Wilson* (7 Cranch, 164); the adjudication was affirmed in Jefferson vs. Kelly (1 Black, 436); and notably so in the cases of the *Home of the Friendless vs. Rouse* (8 Wall. 430); and *Wilmington Railroad vs. Reed* (13 Wall.

264). In these cases, and others of a similar character, the exemption is upheld as being made upon considerations moving to the State, which give to the transactions the character of a contract. It is thus that it is brought within the protection of the Federal Constitution."

In *Jefferson Branch Bank vs. Kelly*, 1 Black, 436, the Court says: "This Court's view of that clause of the constitution, in its application to the States, is now and ever has been, that State Legislatures, unless prohibited in terms by State constitutions, may contract by legislation to release the exercise of taxing *a particular thing*, or corporation, or person, as that may appear in its act, and that the contrary has not been open to inquiry or argument in the Supreme Court of the United States."

We have not cited these two authorities to show that one legislature can bind another, but to show that *a particular thing*, or person, or corporation, may be exempted from taxation, and that such exemption, when not prohibited, is a contract which can not be impaired.

CONCLUSION.

We conclude, therefore, that the Legislature of Louisiana in 1855, deeming it for the interest of the State, and in order to secure the permanent foundation of a charity, by giving such encouragement and assurance as it could to those who might thereby be induced to contribute to its foundation, said if you will, by your continued contributions, secure this permanent endowment, the property shall, for the future, be exempt from taxation so long as you retain possession of it in the Grand Lodge, and this exemption became a contract between the State and the contractors represented by the Grand Lodge and could not be repealed without violating the prohibition contained in the 10th Section of Article 1 of the Constitution of the United States.

There was, therefore, error in the decision of the Supreme Court of the State of Louisiana in that respect, and we ask for a decree accordingly.

Respectfully submitted,

J. Q. A. FELLOWS, and
CHAS. F. BUCK,
Attorneys for Plaintiff in Error.

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Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 715.

THE GRAND LODGE OF THE STATE OF LOUISIANA F. AND A. MASONS, PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Supplemental Brief of Plaintiff in Error.

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Supreme Court of the United States.

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THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Supplemental Brief of Plaintiff in Error.

In the briefs on file, together with the brief submitted to the Supreme Court of the State of Louisiana in support of "Application for Rehearing," which counsel asks to be permitted to annex hereto and file herewith—the questions involved are sufficiently discussed, and we would not deem it necessary to tax the patience of the Court further but for the fact that since those briefs were written and filed, further examination of the jurisprudence of the country on the great question involved has led us to a case decided by the Supreme Court of the State of Missouri, in 1891, absolutely and in every particular identical with the case before us.

It is the case of the President, etc., St. Vincent College vs. Schaefer, 104 Mo., page 261.

The only difference between the two cases is that in *that* case the plaintiff was an "educational"—in this—a "charitable" body; a difference with a suggestion in favor of the latter.

In that case, as in this, the plaintiff had been created by special enactment "a corporation;" in that as in this, the "nature" of the corporation and the objects for which it was created are defined in the law of its existence: in that, as in this—the exemption from taxation was by subsequent special enactment—not *ipsis verbis* an amendment to or part of the charter; and in that case, as in this, particular property used for a particular purpose was declared to be exempt from taxation "so long" as the same shall be used (or occupied) for the purposes or in the manner stated; and, finally, in that case, as in this, the State claimed that the exemption was withdrawn by effect of subsequent changes in the organic law—subsequent Constitutions.

The decision of the Court of first instance was in favor of the State; the Supreme Court reversed it and maintained the exemption.

Counsel for plaintiff in their statement of the case, among the other issues, asserted the proposition (page 262): "It is not necessary that there should be a benefit or advantage to the promisor; inconvenience, trouble, expense to the promisee will make the consideration valuable."

We need not go this far in this case: it is an unquestioned condition or fact,—admitted in legislative designs and practical jurisprudence—that "charitable institutions"—caring for the sick, the helpless, the widow and the orphan,—the burial of forsaken dead,—are not only of benefit, from a moral and humane standpoint, to the community, which is the State, but absolutly perform part of the recognized functions and duties of organized government.

The duty thus "paid" is deemed at least an equivalent of the money consideration surrendered by the State:—and has a

higher value, in its spiritual aspect—which, as a factor of human progress, and culture, it is the direct interest of the State to foster and encourage, for the good there is in it.

The opinion of the Court is so unequivocal and direct—that we insert here *in extenso*, as the book may not be convenient,—*syllabus*, and all, as follows:

SYLLABUS.

1. Constitution: Exemption from Taxation: Statute. Under the State Constitution, as it existed in 1853, the Legislature could exempt the property of a college "from the payment of taxes for State or county purposes so long as the same or the proceeds thereof shall be used for or applied to educational purposes." (Acts 1853, p 569.)
   Page 262.

2. Contract: Exemption from taxation: Constitution. Such exemption constitutes a contract on the part of the State which, in the absence of a reserved right to do so, it cannot abrogate.

3. Consideration. The benefit which the Legislature deemed the State would derive from the passage of the act constituted a sufficient consideration for the contract, and no other is required to support it.

4. Variance in names. An immaterial variance between the name of the corporation in the law creating it and the names as used in the act of exemption from taxation, will not affect the validity of the latter act.
   Page 265.

BLACK, J., delivered the opinion: "This is a suit to recover $159.87 on account of taxes paid by the plaintiff to defendant, as collector of Cape Girardeau county, the taxes having been paid under written protest. The Circuit Court sustained a demurrer to the petition, and from a judgment thereon plaintiff appealed.

"The Legislature, by the act of February 28, 1853, constituted certain persons and their associates a body corporate by the name of 'The President and Faculty of St. Vincent's College.' The act gives to the corporation the right to acquire real and personal property by purchase, gift or devise; provided, that the clear yearly value of the real estate shall not exceed the sum of $10,000.00. The institution is to be established in the city of Cape Girardeau, and, when so established, has conferred upon it all the rights and privileges given by an act incorporating St. Mary's College, in the county of Perry. Acts of 1842, Sec. 3, p. 237.

"The act of February 9, 1853, entitled: 'An act to exempt certain property from taxation,' provides: 'First. All the real estate and appurtenances now belonging to the St. Vincent College and St. Vincent Female Academy, in the county of Cape Girardeau, or held by any other person in trust for the use of said college or academy, be and the same is hereby exempted from the payment of taxes for State or county purposes, so long as the same, or the proceeds thereof, shall be used for or applied to educational purposes.

"Second. That six hundred and forty acres of land, and appurtenances, upon which St. Mary's Seminary now stands, in Perry county, Missouri, be and the same is hereby exempt from the payment of taxes for State or county purposes, so long as the same shall be used and occupied as a seminary of learning.

"Third. That nothing contained in this act shall be so construed as to exempt from the payment of city taxes any property of the said college or academy that may be situated in the city of Cape Girardeau."

Acts of 1853, p. 569.

"The petition sets out these acts, and it is then alleged that plaintiff was duly organized under the first act; that prior to the passage of the last act, it owned certain real estate, and also certain lots in the City of Cape Girardeau; that the institution was located upon part of said lots; that plaintiff duly accepted the last mentioned act and has complied with all of its terms and provisions; that the land and lots were assessed and taxes levied thereon for State and county purposes for the year 1886, in the sum of $159.87; that to pay the taxes so assessed the defendant, as collector, seized certain personal property of the plaintiff and was about to sell the same, when the plaintiff paid the taxes under written protest setting forth its right of exemption.

"It is insisted, on the part of the plaintiff, that the provisions of the Constitutions of 1875, and Section 6659, of the Revised Statutes, 1879, are prospective only in their operation, and are not in conflict with, and, therefore, do not repeal, the exemption contained in the above act of February 9, 1853; but for the purpose of this case we shall assume that *the* present Constitution and statute are inconsistent with the exemption contained in that act, and that the exemption in favor of the plaintiff has been repealed, if the State had the power to repeal it.

"The language of the act of 1853 is clear and free from ambiguity. It exempts the real and personal property then belonging to St. Vincent's College 'from the payment of taxes for State or county purposes, so long as same or proceeds thereof, shall be used for or applied to educational purposes.' There can be no doubt, but the Legislature had the power to pass the law, for such legislation

was not then prohibited by any constitutional provision; nor is it claimed by the defendant that the State reserved the right to repeal the exemption. Acts like the one in question, exempting corporation from taxation, constitute contracts, and the State has no power to impair the obligations of such contracts, unless that right is reserved. The right of the Legislature, unrestrained by constitutional prohibitions, to grant irrevocable exemptions from taxation is no longer an open question. Mechanics' Bank vs. City of Kansas, 73 Mo. 555, and cases cited; Cooley on Const. Lim. (5th Ed.), 340; Home of the Friendless vs. Rouse, 8 Wall. 430; Washington University vs. Rouse, 8 Wall. 439.

"In the case cited from 8 Wall. 430, the Legislature of this State had created a corporation for the purpose of enabling female persons to establish a charitable institution for the relief of destitute and suffering females, and the act declared that all the property of the corporation should be exempt from taxation. It was held that the charter constituted a contract between the State and the corporators, and that the State could not tax the property of the corporation.

"In answer to the objection made in that case, that there was no consideration expressed in the act, the court said: 'There is no necessity of looking for the consideration for a legislative contract outside of the objects for which the corporation was created. These objects were deemed by the Legislature to be beneficial to the community, and this benefit constitutes the consideration for the contract, and no other is required to support it.'

"These observations meet like objections made in the present case. The Legislature deemed the benefit to be derived from the application of the proceeds of the lands to educational purposes a good and sufficient condsideration for the exemption. This act of 1853, therefore, amounts to a contract, and we must hold in conformity with the cases cited that the Legislature had the right to, and did, contract away the power of the State to tax the property of this corporation; for the demurrer admits the plaintiff has and does continue to use the proceeds of the land for educational purposes. The lands and lots were, therefore, exempt from taxation for State and county purposes.

"It is insisted that the act of 1853 does not confer the immunity from taxation upon the plaintiff, because the plaintiff is not named therein. The original act of 1843 is entitled, 'An act incorporating St. Vincent College,' while in the body of the act the institution is incorporated by the name of 'The President and Faculty of St. Vincent's College;' and the exempting act speaks of all real estate, etc., belonging to the 'St. Vincent College.' The objection is too technical to deserve much consideration; for

there can be no doubt but the last act refers to the corporating created by the first one. The title of the first act is quite conclusive. The variance is immaterial, for the two names are substantially the same.

International Insurance Company vs. Davenport, 57 Mo. 289.

"The objections to the petition are, therefore, not well taken, and the judgment is reversed and the cause remanded. The other judges concur.

It need only be added that this case is a complete answer to the harsh and may we not say illogical distinction which the Supreme Court of the State applied between an exemption granted in the "charter" and an exemption by special act.

Carried to all its logical consequences, that would mean that no exemption could ever fall under the protection of a "contract stipulation."

We think the jurisprudence on that point means this, and nothing more, that every charter of a private corporation is a contract—and there is no need for further investigation or search after motive or benefit; the *charter is the contract*—and therefore all its elements, whether reasonable or unreasonable are protected without reference to any other consideration. The only point of inquiry is one of power to grant the charter.

Beyond this, the brief hereto annexed is respectfully referred to in further elaboration of this distinction.

Besides, courts will never forget that each "condition"—even in constitutional questions, calls for the application of rules and principals in harmony with the motive and intent involved.

This truth is illustrated by the reasoning of this honorable Court in the famous sugar bounty case, decided at the last term of this Court.

When, in 1816, the Grand Lodge of Louisiana was incorporated, the Legislature took cognizance of the nature and object of the corporation: it must be presumed to have had its own description—not to say definition before it—when it granted the exemption. It exempted in consideration of the object of the corporation—and the use to which its property may be put.

Many "dicta" and propositions, correct enough in the application in which they are used, are cited to show the necessity of the existence of "valuable consideration," etc., to make a contract, etc. But surely there has been recognized and there exists a fundamental distinction between business corporations and "moral" or "charitable" corporations. An exemption granted to a railroad company, for instance, manifestly stands on other grounds than one granted to a charitable organization!

The enactment of the law exhausted the power of the State as to both the meaning and the form of the contract.

The parties do not meet to sign a contract.

The State—in its enactment of exemption, says it takes cognizance that we have accepted the act of incorporation; the Grand Lodge, by virtue of the acts of 1816 is a "body corporate" and it exists for the purposes named,—the promoting of the good of a society "the principles of which are charity and universal benevolence" ("to the end, therefore, that charitable institutions may be promoted"):—with this before it the Legislature, in 1855, passed the exemption act, limited "so long as it (the property exempted) is occupied as the Grand Lodge of F. and A. Masons." Here are benefits consideration, and corresponding duty and obligation. What more is necessary to constitute a contract?

The reason of the exemption is not only the occupation of the building as the Grand Lodge; that is only the condition of its duration: the real consideration lies in its perpetual, irrevocable and indefeasible dedication to the cause of pure charity—for the practice of which it was made a body corporate. If the Grand Lodge of Louisiana, instead of being what it is and always has been —were to change its organization, its nature and purposes—the exemption which is based on *that* as its consideration, could be withdrawn, whether the property was occupied by the Grand Lodge or not.

The Supreme Court of Missouri could see no distinction in

the exemption of property of institutions which may be favored, under well known principles—as charitable or educational bodies, —whether the exemption be in the charter or by special enactment. Manifestly there is absolutely no distinction in principle or theory conceivable.

At least, there is no more than this, technically: a *charter* being a contract, an exemption granted in it,—is protected because it is a part of the contract—and no reason or motive, benefit or consideration, duty or obligation need be apparent!

In a special act—the duty and obligation as well as the benefit—must be apparent:—but when these appear—however insignificant they may seem, they rivet the matter with the tie of contract.

The sufficiency of consideration or the propriety of motive are for the Legislature not for the Court to determine. *Any* consideration—is a *sufficient* consideration: and when the grant is accepted and acted on, it falls within the consecrated domain of contract guarded by the Section 10, of Article I, of the Constitution of the United States.

Mr. Justice Cooley says the principles here contended for have long since become a part of the jurisprudence of the land—"not without remonstrance from State Courts."

The case of Home of the Friendless vs. Rouse, 8 Wallace, reversed the Supreme Court of Missouri: that Court has "mended" and we are grateful to it for the decision above cited.

The Supreme Court of Louisiana was found "in error" in the case of St. Anne's Asylum, 105 U. S. 362; and,—with all due reverence, we say it,—its jurisprudence on the very question now before this Court is lamentably involved.

Wether this is a just criticism we confidently submit to the impartial judgment of any one who will carefully read and compare,—City of New Orleans vs. Canal and Navigation Company, 36 An. 396,—New Orleans Poydras Asylum, 33 An. 850; New Orleans Female Orphan Asylum vs. Tax Collector, 37 An. 68, and the opinions delivered in this case.

In the first case above cited, 36 An. 396, the Court decided that an exemption by special act was not repealed by the Constitution of 1879!

In the case in 33 An. it was decided that such an exemption was not repealed by the Constitution of 1868. This was affirmed in 37 An. 68; in the case under consideration, the exemption was refused on the ground that the Constitution of 1879 which passed harmlessly over the acts exempting the Canal and Navigation Company, swept it out of existence, in this case.

In the reasons for refusing application for rehearing the Court makes a distinction between the wording of the Constitution of 1868, under which the exemption was held not to be repealed in 33d and 37th An.: and the Constitution of 1879 under which it is refused in this case. The words in Constitution of 1868 are: "*The General Assembly shall have power to exempt from taxation property actually used for church, school or charitable purposes.*" Act 118.

The similar provision in Constitution of 1879, Article 207, is,—that all property * * of charitable institutions, etc., * * shall be exempt "PROVIDED the property so exempted shall not be used or leased for purposes of corporate profit or income."

This is a distinction without a difference—for manifestly the one exempts property "*actually used*"—the other,—all property except that which "is leased or used for profit or income"—not "*actually*" used.

In 33d and 37th An. it was decided the Constitution of 1868 did not repeal the exemption; in 36th An. it was decided that the Constitution of 1879 did not repeal the special exemption, and 33d An. was cited as authority!

These decisions only show the uncertainty of our jurisprudence, greatly the result of that tendency of State courts to brace up in resistance to an appeal for protection under the Federal Constitution.

This great Court, ever imbued with the dignity as well as the responsibility of its loftier mission, is never swayed by such narrow considerations.

Its most glorious decrees are written on the immovable bedrock of constitutional truth.

Nor is the public interest or the public good more on the side of the State than with the plaintiff in error. In these days of material iconoclasm, when to many there is nothing sacred in the established order of things, it is infinitely of greater concern to the public welfare that constitutional principle should prevail and be permitted to effect their conservative purposes—than that the State of Louisiana or the City of New Orleans should collect their contribution of taxes from the Grand Lodge on the property upon which they had granted exemption.

Respectfully submitted,

J. Q. A. FELLOWS,
CHAS. F. BUCK,
For Plaintiff in Error.

JAN 15 1897
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

No. 111, OCTOBER TERM, 1896.

THE GRAND LODGE OF THE STATE OF LOUISIANA, F. AND A. MASONS,

PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS,

DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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SUPREME COURT OF THE UNITED STATES.

No. 111, October Term, 1896.

THE GRAND LODGE OF THE STATE OF LOUISIANA, F. AND A. MASONS,

Plaintiff in Error,

versus

THE CITY OF NEW ORLEANS,

Defendant in Error.

In Error to the Supreme Court of the State of Louisiana.

March 18, 1816, by Act of the Legislature of the State of Louisiana, the Grand Lodge of the State of Louisiana was chartered (Rec., p. 11).

February 4, 1853, the Grand Lodge acquired, by purchase, the property upon which the city of New Orleans levied taxes, the collection of which, for the years 1888, 1889 and 1890, is herein enjoined.

March 15, 1855, the State Legislature passed the following act:

> No. 225. An act to exempt from taxation the hall of the Grand Lodge of F. and A. Masons of the State of Louisiana.
>
> *Be it enacted* by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the building situated on the corner of St. Charles and Perdido streets, in the city of New Or-

> leans, and known as the Hall of the Grand Lodge of F. and A. Masons of the State of Louisiana, shall be exempt from State and parish taxation so long as it is occupied as the Grand Lodge of the F. and A. Masons.

The act is given above in full, and it is that act which plaintiff in error claims is a contract protected by the Constitution of the United States, and is not subject to repeal. It is a spontaneous act of the Legislature, and belongs to the class of laws denominated *privilegia favorabilia*. *Rector Christ Church vs County of Philadelphia*, 24 How. 301.

The contention of the city is that the act contains not an element of contract. The Legislature alone acted. There was but one party to the act, and consequently there was no agreement. The Revised Civil Code of Louisiana, Art. 1761, says:

> A contract is an agreement by which one person obligates himself to another to give, to do or to permit, or not to do something expressed or implied by such agreement.

In defining what a contract is, the Court say in *Edwards vs. Kearney*, 96 U. S. 59:

> It is the agreement of minds, upon a sufficient consideration, that something specified shall be done or shall not be done.

Act No. 225 of 1855 is not an amendment of or part of the charter of the Grand Lodge. It is a simple act of beneficence of the State toward the Grand Lodge. That such an act may be repealed by a succeeding Legislature, or by constitutional enactment, has been too often decided to admit of discussion. It is not an open question. The original charter of the Grand Lodge did not contain a provision exempting property of the Lodge from taxation. The Lodge bought the property involved herein under its charter. Two years thereafter the Legislature exempted the property already acquired from taxation. In 1879 the Constitution of the State repealed the law of exemption in the following terms:

> Taxation shall be equal and uniform * * * and *all* property shall be taxed in proportion to its value. * * *

> The following property shall be exempt from taxation, *and no other*, viz.:* * * All charitable institutions, * * * provided, the property so exempted be not used or leased for purposes of * * * corporate profit or income.

The evidence in the record shows that plaintiff in error is a charitable institution, and that its property is used and leased for purposes of corporate profit or income.. The property falls without the proviso. It is, therefore, taxable in proportion to its value, and the injunction sued out to prevent the collection of the tax must be set aside.

Defendant in error relies on the following citation of authorities in support of its position, and asks for an affirmance of the judgment of the Supreme Court of Louisiana:

Rector of Christ Church vs. County of Philadelphia, 24 How. 300.

Salt Company vs East Saginaw, 13 Wall. 373.

Asylum vs. New Orleans, 105 U. S. 362.

Home of Friendless vs. Rouse, 8 Wall. 430-439.

Coo ey on Taxation, Chap. XI. 145-154.

Commonwealth vs. Bird, 12 Mass. 443.

Brainard vs Town of Colchester, 31 Conn. 407.

State ex rel. Bertel vs Board of Assessors, 34 La. An. 574.

City vs Poydras Asylum, 33 La. An. 850.

New Orleans Female Orphan Asylum vs. Houston, 37 La. An. 68

City of New Orleans vs. Congregation, etc., 15 La. An. 379.

New Orleans vs. People's Bank. 27 La. An. 646.

City of New Orleans vs. New Orleans Mechanics Society. 27 La. An. 436.

New Orleans vs Metropolitan Loan, etc., 27 La. An. 498.

New Orleans vs. St. Patrick's Hall, 28 La. An. 512.

State vs. Bank, 23 La. An. 271.

New Orleans vs. Lafayette Insurance Co. 28 La. An. 750.

Respectfully submitted,

SAM'L L. GILMORE,
City Attorney.

W. B. SOMMERVILLE,
Assistant City Attorney.

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Court, U. S.

JAN 12 1897

CLERK.

No. 333.

SUPREME COURT OF THE UNITED STATES.

October Term 1896.

THE GRAND LODGE OF THE STATE OF LOUISIANA F. AND A. MASONS, PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS.

In Error to the Supreme Court of the State of Louisiana.

BRIEF OF ATTORNEY GENERAL OF THE STATE OF LOUISIANA, ATTORNEY FOR TAX COLLECTORS AND BOARD OF ASSESSORS.

M. J. CUNNINGHAM,
Attorney General.
F. C. ZACHARIE,
Attorney for Tax Collectors and Board of Assessors, Parish of Orleans.
ALEX. PORTER MORSE,
Of Counsel.

No. 383.

SUPREME COURT OF THE UNITED STATES.

October Term 1896.

THE GRAND LODGE OF THE STATE OF LOUISIANA F. AND A. MASONS, PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS.

In Error to the Supreme Court of the State of Louisiana.

BRIEF OF ATTORNEY GENERAL OF THE STATE OF LOUISIANA, ATTORNEY FOR TAX COLLECTORS AND BOARD OF ASSESSORS.

BRIEF.

Although the State officers of the State of Louisiana, the Board of Assessors and Tax Collector, are not made parties to this suit, the undersigned have

been entered of record herein as representing those officers as joining the defendant, the City of New Orleans, appellee and defendant in error. The reason of their action lies in the fact that the interests of the State, in the question at issue in this cause, are identical with that of the City of New Orleans. Its interest in maintaining the decisions of the Court *a qua*, the Supreme Court of the State, is therefore, the same as that of the City of New Orleans. Every issue in the case has been so fully argued and passed on in the logical and conclusive opinions of the Supreme Court of Louisiana, and all the authorities, bearing on the points involved, reviewed in such a masterly manner, that counsel for the State officers feel that they can add nothing to the force of the reasoning of that Court. They therefore transcribe, for the convenience of this Honorable Court, as their argument and brief, the original opinion and the opinion refusing the rehearing, which fully discuss the points in the cause on pages 17-25 and 26 to 29 of the transcript.

By Mr. Justice Watkins:

"The plaintiff enjoined the city from proceeding to seize and sue for delinquent taxes of the years 1888, 1889 and 1890, property of which it is the

owner and which is situated in the square bounded by St. Charles, Perdido, Union and Carondelet streets, in the City of New Orleans, and known as the 'Masonic Grand Lodge Hall,' alleging its exemption from said taxes under the provisions of Act 225 of 1855.

It alleges that said exemption was granted by the State in consideration of the principles and objects of the institution of Freemasonry, which are charity and individual benevolence and the establishment and promotion of charitable institutions, and in further consideration of the resolution that is contained in its act of purchase of said property, in 1853, to the effect that the entire revenues of same, as soon as it is paid for, shall be devoted 'to the relief of worthy distressed members of the order, their wives, children and families, and as a permanent charity fund,' etc.; and it avers that said exemption 'became a contract between the State of Louisiana and the Grand Lodge * * * so long as the said property should be the property of the Grand Lodge and be occupied by it' and the revenues continued to be so applied.

It is further averred that each of those conditions now exists and has continually existed since the enactment of said exemption law, and that the law under the color of which the defendant claims the

right to levy and collect said taxes impairs the obligation of its protected contract, in violation of Section 10 of Article 1 of the Constitution of the United States, and is therefore null and void.

The city's answer is a general denial.

The contention of the plaintiff is that said exemption, under the circumstances related, had and has the force of a legislative contract, which could not be repealed or impaired by subsequent constitutional provision or statutory enactment.

On the other hand, the contention of the defendant is that Act 225 of 1855, relied upon by the plaintiff, conferred a mere gratuity, benefaction, or munificence, which was subject to repeal or legislative recall at any time; that Article 207 of the State Constitution repeals the Act of 1855 by imposing the additional restriction upon the exemption of the property of charitable institutions that same 'shall not be used or leased for purposes of private or corporate profit or income,' and that proof of the property not being so used is a condition precedent to the allowance of the exemption.

This contention of the city is supplemented by the further one that, as in the charter granted to the plaintiff in 1816, there is no mention of the exemption of its property from taxation, and as the property in question was acquired by it two years prior

to the enactment of the exemption act, and the exemption did not therefore constitute any part of the consideration thereof, said act does not contain the constituent elements of a contract which could be protected by the Federal Constitution from impairment.

And therefore the Act of 1855 became subject to repeal by the contrary provisions of Article 207 of the Constitution of the State, there having been in existence no contract on the part of the State not to tax the plaintiff's property at the time of its acquisition, and there having been no covenant on the part of the State stipulated in its charter as to the exemption of property which it might thereafter acquire.

From the premises laid down on either side, it is clear that the decision of this case must necessarily depend upon the existence *vel non* between the State and plaintiff, antecedent to the adoption of the Constitution of 1879, of a contract in respect to the exemption of its property from taxation.

It is conceded that the State granted a charter to the Grand Lodge in 1816, and that it contained no mention of any exemption of its property, present or prospective, from taxation; that the property alleged to be exempt was purchased in 1853, and the exemption statute was not enacted until the 15th of

March, 1855. It is couched in the following terms, viz:

'Be it enacted, That the building situated at the corner of St. Charles and Perdido streets, in the City of New Orleans, and known as the hall of the Grand Lodge of F. and A. Masons of the State of Louisiana, shall be exempt from State and parish taxation so long as it is occupied as the Grand Lodge of the F. and A. Masons.'

Act 225 of 1855, p. 271.

In order to disclose a consideration for this alleged contract, plaintiff introduced proof to show that the Grand Lodge is an eleemosynary institution 'founded on the ancient usages of their society, the principles of which are charity and universal benevolence.'

But, while conceding the charitable objects and purposes of the order, defendant's counsel contends that that is insufficient to maintain the exemption without further proof that said exempt property has not been 'used or leased for purposes of private or corporate profit or income.' Court, Art. 207.

We are thus presented with a close question of constitutional law, and to resolve it satisfactorily recourse must be had to the decisions of the Supreme Court, as well as our own, and the opinions of text writers.

First, consulting Judge Cooley, whose views upon such questions are always lucidly expressed and instructive, we find that after having made a careful examination of the authorities he has taken the distinction which the city attorney suggests as the correct one on which to place our decision.

That author has divided into two distinct topics the question here presented as one and indivisible. Treating of charters granted by a State to private corporations containing stipulations exempting corporate franchises and property from taxation, he says such a charter 'is a contract between the Commonwealth and the corporators, and that such stipulations are *irreparable*.'

Cooley on Taxation, Chap. III, p. 55.

But, in subsequently discussing exemption of corporate franchises and property which are 'granted on consideration of public policy,' he says: Same 'may be recalled whenever the legislative view of public policy may be changed. To the individuals, corporations or associations benefitted by them they are to be regarded as favors or privileges, merely to continue during the pleasure of the sovereignty, and there can be no breach of faith—certainly no want of power—in terminating them at any time.'

Ibid., Chap. XI, pp. 145, 54.

See also cases illustrating this principle which are cited on page 54.

As preliminary to this distinction the author says:

'An exception, however, is held to exist in case of an agreement by a State, entered into for a consideration, to refrain from exercising this power, that provision of the Federal Constitution which forbids the State passing laws which impair the obligation of contracts applying as well to contracts by the State itself as to those between individuals.

* * * * *

'A number of cases for which this has been the precedent are referred to in the note, but it is conceded in all of them that there must be a considera tion to the State for the relinquishment or the elements of a contract will be wanting.' *Ib.*, p. 54.

A leading and conspicuous case fairly illustrating the questions herein involved is City of New Orleans vs. St. Anna's Asylum, 31 An. 292.

In that case it appears that the defendant asylum was created by a legislative charter granted in 1853, and it acquired in 1874 the property which was alleged to be exempt, and resisted the payment of taxes assessed thereon in 1876. In stating the question before it, the Court said:

'Under the settled jurisprudence there can be no doubt of the liability of the property in controversy unless removed from the general rule by some ex-

ception. Such exemption is claimed as resulting from the charter of the defendant corporation, by which it is contended that a contract was created divesting the State of all power to repeal the exemption claimed.'

After quoting the provisions of the charter which were relied upon as constituting a contract, the Court proceeds to state:

'The solitary question, therefore, is, was this exemption a contract of *such a nature* as to invest the corporation with such a right as to remove it from all subsequent legislative control? We think not,' etc.

Proceeding with the expression of the reasons which influenced this conclusion, they said—

'That a general power to repeal or modify a charter enters into the charter and *pro tanto* divests it of the character of a contract is now the settled opinion of the Supreme Court of the United States.' (Italics are ours).

Hence, the conclusion of the Court was that the State had the authority, under the general power it possessed of repealing or modifying the legislative charters of private corporations, to divest it of the character of a contract altogether.

That case was carried up on writ of error to the Supreme Court—Asylum vs. New Orleans, 105 U.

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S., 362—and it was therein reversed and the exemption sustained. Referring to the sixth section of the legislative charter of the asylum, which grants the exemption relied upon, the Court said:

'The corporation filed an answer setting up the exemption from taxes contained in its charter, and claiming that it was a contract, and contended that the Constitution of 1868, and the statute passed in pursuance thereof impaired the obligation of said contract, in violation of the tenth section of the first article of the Constitution of the United States.'

After stating the grounds of the decision by our predecessors, as shown by our previous quotations, they proceeded to make an examination and give a synopsis of the cases cited and relied upon, and said:

'We think they do not apply to the case now under consideration. In the first place, the Constitutions of Michigan and Wisconsin, in which States those cases arose, reserved to their legislatures, respectively the power to alter, amend and repeal charters of incorporations. In the next place, in those cases the exemption granted was held to be gratuitous on the part of the State, no consideration passing therefor from the companies. It was no part of their charters of incorporation, and therefore formed no consideration for their acceptance,

whereas in the present case the exemption was expressed in the charter itself and was one of the inducements offered for its acceptance and for making donations for the establishment of the institution.'

Thereupon, the Court held, that the imposition of the tax in question against the property of the asylum was not a legitimate exercise of the power of dissolution reserved in the Code' of Louisiana, and that the 118th Article of the Constitution of 1868 was in violation of the Constitution of the United States in this respect.

We have quoted from this decision at great length, as it fully sanctions the distinction taken by Judge Cooley and affirms the correctness of the principle on which the exemption is placed—that is to say, upon a provision of a legislative charter for the granting of which the exemption constitutes a consideration and an inducement to the acceptance thereof.

Home of the Friendless vs. Rouse, 8 Wallace, 430, is an exactly parallel case.

From the statement of the case it appears that the Legislature of the State of Missouri granted a charter in 1853 to a private corporation styled the Home of the Friendless, a charitable institution, and therein a stipulation was placed exempting all of its property from taxation, in general terms; that

under the provisions of a State Constitution adopted in 1865, the Legislature authorized the levy of a tax on the property of this corporation, and the corporation resisted payment on the ground of the impairment of its contract of exemption. This exemption was denied by the Missouri Court, but the Supreme Court, on writ of error, held:

'This charter is a contract between the State of Missouri and the corporation; that the property given for charitable uses specified in it shall so long as it is applied to those uses be exempt from taxation. It follows that any attempt to tax it impairs the obligation of the contract.'

To the same effect are many other decisions of the Supreme Court, and we cite the following, viz.:

University vs. People, 99 U. S. 309.

Meritt vs. Philadelphia, etc., 18 Wall. 206.

North Missouri R. R. Co vs. Maguire, 20 Wall. 46.

Erie R. R. Co. vs. Pennsylvania, 21 Wall. 497.

The Delaware R. R. Tax, 18 Wall. 206.

Miller vs. The State, 15 Wall. 478.

The Burghampton Budge, 3 Wall. 51.

As appertaining to this question, quite a number of decisions collateral thereto may be appropriately cited.

For instance, in Edwards vs. Kearsey, 96 U. S. 59, what a contract was, in a constitutional sense,

was defined to be 'the agreement of minds, upon a sufficient consideration, that something specified shall be done or shall not be done.'

In Fletcher vs. Peck, 6 Cranch, 87 it was held that when a State 'law is in the nature of a contract and rights have been vested under it, its repeal can not divest those rights.'

It is conceded to be the settled interpretation of the Supreme Court, in reference to the contract clause of the Constitution of the United States, that a State Constitution is a law within the meaning thereof.

Railroad Company vs. McClure, 10 Wall. 511.

Gray vs. Davis, 1 Woods, 420.

Green vs. Barry, 15 Wallace, 610.

White vs. Hart, 13 Wallace, 647.

Williams vs. Bruffy, 95 U. S. 184.

Bank vs. Skelly, 1 Black, 436.

Dodge vs. Woolsey, 18 Howard, 331.

But the decisions are quite as numerous and as pertinent which illustrate the correctness of the second proposition of Judge Cooley, and of this class the case of Rector, etc., of Christ Church vs. County of Philadelphia, 24 Howard, 300, may be taken as a leading and forcibly expressed opinion thereon.

In the statement of the case the Court said:

'In the year 1833, the Legislature of Pennsylvania passed an act which recited that Christ Church Hospital, in the City of Philadelphia, has for many years afforded an asylum to numerous poor and distressed widows who would probably else have become a public charge; and it being represented that in consequence of the decay of the buildings of the hospital estate and the increasing burden of taxes, its means are curtailed and its usefulness limited,' they enacted 'that the real property, including ground rents, now belonging and payable to Christ Church Hospital, in the City of Philadelphia, so long as same shall continue to belong to the said hospital, shall be and remain free from taxes.'

It further appears that in 1851 the Pennsylvania Legislature passed a law declaring 'that all property, real and personal, belonging to any association or incorporated company which is now by law exempt from taxation, other than that which is in the actual use and occupation of said association or incorporated company, and from which an income or revenue is derived by the owners thereof, shall hereinafter be subject to taxation in the same manner and for the same purposes as other property is now by law taxable; and so much of any law as is hereby altered and supplied, be, and the same is hereby repealed.'

The Pennsylvania Court held that the exemption conferred by the statute of 1833 in favor of the Christ Church Hospital, was partially repealed by the Act of 1851, and that an assessment of its property in virtue thereof was not repugnant to the contract clause of the Federal Constitution.

On writ of error the plaintiff's contention was that the exemption of the act was perpetual as the act itself was in effect a protected contract, just as plaintiff's contention is here.

The Court, through Mr. Justice Campbell, says:

'This concession of the Legislature was spontaneous, and no service or duty or othsr remunerative condition was imposed on the corporation. It belongs to the class of laws denominated *priviligia favorabilia*. It attached only to such real property as belonged to the corporation and while it remained as its property; but it is not a necessary implication from these facts that the concession is perpetual or was designed to continue during the corporate existence * * * The inducements that moved the Legislature to concede the favor contained in the Act of 1833 are special and were probably temporary in their operation. * * * It is in the nature of such a privilege as the Act of 1833 confers, that it exists *bene placitum*, and may be revoked at the pleasure of the sovereign.'

We have quoted from this case at length because there seems to be an exact parallel between it and the instant case, and for that reason the decision is peculiarly applicable and pertinent.

In Salt Company vs. East Saginaw, 13 Wall. 373, the Court very clearly distinguished statutes which contain exemptions from taxation, the property of private corporations, merely, and those which grant charters to such corporations and therein stipulate continuing exemptions.

The Court, in analyzing the statute of Michigan, which was therein involved, made this observation: 'A law dictated by public policy and the general good, etc.—such a law is not a contract, except to bestow the promised bounty upon those who earn it so long as the law remains unrepealed. There is no pledge that it shall not be repealed at any time.'

Again: 'Charters granted to private corporations are held to be contracts. Powers and privileges are conferred by the State and corresponding duties and obligations are assumed by the corporation.'

In the case of Commonwealth vs. Bird, 12 Massachusetts, 443, a similar principle is announced. The same is true of the case of Brainard vs. The Town of Colchester, 31 Conn. 407. But the whole question is very tersely put and decided in People vs. Roper, 35 New York, 629, the Court declaring that:

'It is also true that, for adequate consideration and in the exercise of its general authority (the State), may invite investments in a particular description of property for the benefit of the State by stipulating for its exemption in the hands of the holders from assessment as a subject of general taxation. * * *

But 'it is never to be assumed, however, that the State has even to this extent fettered its power in the future, except upon clear and irresistible evidence that the engagement was in the nature of a private contract, as distinguished from a mere act of general legislation, etc.'

After quoting at length the language of Chief Justice Marshall in Providence Bank vs. Billings, 4 Wheaton, 429, the Court said:

'For an *irreparable* contract of such a nature in the name of the body politic no authority is found either in our legislative or our congressional precedents.'

'*A contract in a corporate charter for immunity in respect to a franchise conferred by Government is essentially distinct in its nature from a prospective absolution of the citizen from his future obligations to the State.*" (Italics ours).

We are of opinion that the foregoing summary of authority, Federal and State, fully sanctions and

substantiates the correctness of the distinction made by Judge Cooley between repealable and irrepealable statutory exemptions from corporate taxation.

We have carefully examined the decisions of the Courts of last resort in many other States as well as those of this Court and have found none which pronounce a contrary view. On the contrary, we find them in full accord therewith in every particular.

In the case of City of New Orleans vs. The Poydras Orphans' Asylum, 33 An. 850, in which the plaintiff's effort to collect taxes assessed against property of the defendant was resisted on the ground that same was exempt from taxation by various statutes enacted prior to the adoption of the Constitution of 1868, and which the plaintiff contended to have been repealed thereby, passed off on the ground that there was 'no incompatibility between the exemption laws invoked and the Constitution of 1868, and hence the exemption laws invoked were not repealed thereby, but remained in full force and the tax was defeated.'

It is a fact fully attested by a comparison made of the exemption law of 1855, that is invoked by the plaintiff and the pertinent provisions of Article 207 of the Constitution, that the former is subjected by the latter to an additional and essential condition

precedent that is destructive of the claim of the plaintiff unless the exemption be given the force of a protected contract.

The following extract from Article 207 is relied upon, viz:

'The following property shall be exempt from taxation and no other, viz: All public property, places of religious worship or burial, all charitable institutions; * * * provided the property so exempted be not used or leased for purposes of private or corporate profit or income.'

In considering a germane question in State ex rel. Bartel vs. Board of Assessors, 34 An. 574, we held that the primary objects of the 'Supreme Council of 33 Scotch Masonry,' as appears from the evidence in the record and its legislative charter of 1870, are benevolence and charity, and as such was entitled to enjoy the prohibition contained in Article 207 of the Constitution; but because the evidence disclosed that part of the buildings were rented for stores and produces revenue, we held that that was obnoxious to the proviso of Article 207 of the Constitution, and maintained the tax. See also State ex rel. Tulane Founder Board, 35 An. 665.

The only condition imposed by the exemption act of 1855 was that the exempt property should con-

tinue to be 'occupied as the Grand Lodge of the F. and A. Masons.'

The proof shows that during the years in which the complained of assessments were made a part of the ground floor of the exempt property was rented for stores, and that some of the rooms were rented for other like purposes, and that from these sources a large amount of corporate income had been realized, and if the plaintiff does not possess a contract in the sense of the Federal Constitution, its property is clearly subject to taxation under the terms of the Bartel decision and Article 207 of the Constitution.

And it is well worthy of remark that it is in line with many previous adjudications on this question; among the number the following may be cited, viz:

City of New Orleans vs. The Congregation, etc., 15 An. 379.

City of New Orleans vs. N. O. Mechanics, 27 An. 436.

New Orleans vs. People's Bank, 27 An. 646.

New Orleans vs. Metropolitan Loan, etc., 27 An. 498.

New Orleans vs. St. Patrick's Hall, 28 An. 512.

State vs. Bank, 23 An. 271.

New Orleans vs. Lafayette Ms. Co., 2 An. 750.

City vs. Carondelet Canal and Nav. Co., 36 An. 396.

On the whole, our conclusions are that Act 225 of 1855, which exempts from State and parish taxation the property of the plaintiff, 'so long as it is occupied by the Grand Lodge of the F. and A. Masons,' does not contain a contract between the State and that corporation that is irrepealable, but that the exemption of the statute was granted on consideration of public policy, independently of the consideration existing in its previously granted legislative charter, and subject to be recalled whenever the legislative view of public policy might be changed; that the provisions of that act are subordinate to those of Article 207 of the Constitution of the State providing that the property of charitable institutions shall be exempt from taxation, if it 'be not used or leased for purposes of private or corporate profit or income;' that this constitutional provision, nor the statute under which the tax in question was levied, *are* amenable to the constitutional invalidity urged against them.

We very much regret that we have been constrained to subject to taxation the property of the plaintiff's meritorious association, but we have been unable, after careful research, to find any authority in our own decisions or those of the Supreme Court which holds that a bare statutory exemption, not contained in the legislative charter of a private cor-

poration, nor in an amendment thereto, and not expressly defined to be a contract between the State and the corporators, is irrepealable and not subject to recall at the option of the Legislature.

We find the authorities are unanimous to the contrary; but if we be in error in this view the Supreme Court can set the decision right.

Plaintiff's injunction was therefore erroneously maintained and perpetuated.

ON APPLICATION FOR A REHEARING.

We will not restate the case. It is sufficient to say that the eleemosynary character of the institution is not controverted by defendant's counsel.

That this Court has decided that Masonry is a charitable institution, 36 An 397; that defendant's propositions are:

That the act pleaded as exempting the property of plaintiff from taxation is not part of plaintiff's charter nor an amendment, being a subsequent and independent act, in the nature of a favor or privilege, subject to repeal at any time.

That the action of the State exempting the property subsequent to its purchase by plaintiff cannot be held as the basis of a contract affecting the previously purchased property.

That Article 207 of the Constitution repealed the special exempting act pleaded.

That the terms of the Constitution of 1868, with reference to exemption, are different from those of the Constitution of 1879.

The plaintiff, in reply to those propositions, earnestly contends that the questions have been decided in several cases, and that it is protected by the rule of *stare decisis*.

The St. Anna Asylum, a corporation created for charitable purposes by legislative charter, owned property, the revenues of which were applied to charitable purposes.

In a case which was tried against that institution it was decided that its revenues were not exempt from taxation.

On appeal to the Supreme Court of the United States the judgment was reversed. The Court held that the exemption was made part of the charter and was one of the inducements offered for its acceptance and for making donations for the establishment of the institution.

Asylum vs. New Orleans, Otto 105, p. 362.

Commencing with the leading Dartmouth College case, in which the Legislature assumed to remodel the charter of that college, the doctrine has been affirmed and reaffirmed, as held in our original

opinion, that such a charter is a contract which the State grants in expectation of benefits to the public which cannot be amended or repealed to the prejudice of the rights accorded.

There is no analogy between the pending case and the St. Anna Asylum case further than that they are both charitable institutions, and that each leased part of its property. In the former the act of exemption does not contain or import a consideration, in the latter the charter contained the elements of a contract protected by the Federal and State Constitutions.

The other cases referred to apply and the questions involved have a bearing upon the issues in the case under consideration; we are, therefore, compelled to meet the principles laid down in them and to express our inability to reach the same conclusion.

In City of New Orleans vs. Poydras Orphan Asylum, 33 An. 852, the defendant corporation was created by special acts of February, 1817. It was exempted from taxation under special acts of March, 1836. The case being similar to the pending case, the special exemption did not secure a vested right.

The taxes claimed were for the year 1870, and the case was decided under the Constitution of

1868. The Court held that all the property—that yielding a revenue to and that actually occupied by the Poydras Asylum—was exempt from the payment of the said tax.

The principles upon which the decision rests will be referred to later in our decision.

The question of immunity from taxation of charitable institutions owning property other than that which they occupied received consideration in the case of the New Orleans Female Orphan Asylum against Houston, Tax Collector, 37 An. 69. The taxes claimed were for certain years preceding 1879.

The charter did not contain a clause exempting its property from taxation.

The exemption was secured under subsequent special legislation, as in the pending case.

Property yielding a revenue for the benefit of the asylum was decreed exempt from taxation.

We quote from the dissenting opinion in that case of the late Justice Manning: 'The whole subject came under review in the Poydras Asylum case, and was so extensively treated as to render a renewal of the discussion both unnecessary and tedious. I content myself with saying that the dissenting opinion of Mr. Justice Fenner in that case expressed my views, and for the reasons therein

given I dissent from the majority opinion in this case. I recognize, however, the injustice that would be done by subjecting the plaintiff and other charitable institutions in *con simile casu* to the payment of taxes, while the Poydras Asylum has been decreed exempt, and I shall in future adopt the ruling in that case as final.' In another case referred to—The City vs. Canal and Navigation Co., 36 An. 397—the plaintiff claimed that the special statute exempting property of the defendant from taxation was repealed by the Constitution of 1879.

The Court held:

'In the case of the Poydras Asylum, 33 An. 850, we had occasion to consider a similar question of exemption, and we came to the conclusion that the Constitution did not contemplate or produce the effect claimed.'

The reasoning and the authorities collected in that case are applicable to the present one.

In a subsequent case, involving a question of the exemption of the said company, it was decided by this Court that the said defendant had assumed certain obligations and thereby acquired a vested right which made a repeal of its exemption void.

City vs. Canal Navigation Co., 44 An.

Two principles of interpretation and construction are set forth and followed in the above mentioned decisions:

First. That Article 207 of the Constitution is prospective and not retrospective.

Second. That a special law is not repealed by a subsequent general law.

We have been slow in following a line of discussion which has resulted in our adopting the views herein expressed, and in laying down a general rule of exemption we think should be followed. We recognize the soundness of the principle that generally no statute should have a retrospective effect. But the sovereign has a power we cannot disregard.

The limit of that power is expressed by the following: 'Retrospective laws which do not impair the obligation of contracts or partake of the character of *ex post facto* laws are not condemned or forbidden by any part of the Constitution of the United States.'

Satterlee vs. Mothensen, 2 Peters 380.

In the pending case and those held to be analogous there is no contractual obligations and no vested right having the effect of withdrawing from the sovereign the power of repeal of special acts of exemption From Dwanis' p. 165, on the same subject we quote:

'The rule of interpretations by which that construction of a statute is to be avoided which gives it

a retrospective operation, has little or no application in construing the organic law.'

All trustworthy authorities agree in maintaining the principle that a special exemption law may be repealed if no vested right exist.

If the principles laid down in the decisions referred to should prevail; it would not be possible to repeal any special act of exemption although absolutely gratuitous.

The next question relates to the repeal of the special act by the subsequent general law.

The article (207 of the C.) contains a prohibition contrary to and irreconcilable with the special statutes pleaded by plaintiff.

The plaintiff collects a revenue from part of the property. The proviso of said article prohibits the exemption of property used or leased for purposes of private or corporate profit or income. The maxim *leges posteriores priores contrarias abrogant* applies. From one of the cases referred to by plaintiff's counsel we quote:

'The old is abrogated by the new law only when the latter is couched in the negative or is so clearly repugnant as to imply a negative.' 33 An. 850. The proviso in question is irreconcilable and repugnant and contains an absolute prohibition. It is direct and became a part of every

statute granting immunity from the payment of taxes, in which no right is secured except that of exemption at the will of the sovereign. The special act exempting the plaintiff is only ineffective in so far as use is made of its property for the purpose of corporate profit or income.

The part of plaintiff's property not leased or used for corporate profit or income is exempt. In State *ex rel.* A. N. Bertel et al. vs. Board of Assessors, 34 An. 574, the assessment was reduced by deducting the value of the property exempt.

A decree will be entered having in view a similar reduction. From the assessed value of the whole property described in plaintiff's petition must be deducted that part which is not subject to taxation, leaving the remainder subject to taxation.

On the application for a rehearing an oral argument was heard.

The case having been reconsidered on this application, our decree is amended without granting a rehearing and the case is remanded.

ON APPLICATION FOR REHEARING.

It is therefore ordered, adjudged and decreed that our previous decree be amended by recognizing the exemption of that part of the property occupied by

the grand and subordinate lodges of F. and A. Masons of La., and in other respects the demand is rejected.

The case is hereby remanded to the Court *a qua*, with direction to hear evidence and ascertain what property is thus occupied and what property is rented or used for purposes of private or corporate profit or income and to pass upon and decide the relative values of that part of the property thus occupied by said Masons to that leased or used as aforesaid—*i. e.* from the assessed value of the property, viz.: $60,000, must be deducted the value of the property exempt as aforesaid. Judgment for taxes will be rendered, in compliance with law, on the remainder of the assessment for taxes due annually for the years claimed.

The defendant to pay the cost of appeal and the cost of the lower Court already incurred."

All of which is respectfully submitted,

M. J. CUNNINGHAM,
Attorney General.

F. C. ZACHARIE,
Attorney for Tax Collectors and Board of Assessors, Parish of Orleans.

ALEX. PORTER MORSE,
Of Counsel.

ADDENDUM.

(*To be inserted in briefs filed for State in cases* 108, 483 *and* 111).

In reviewing the briefs already in print, we find that we have failed entirely to say anything about the Commissions. Your Honors will see in the statement on page 17 of the brief, No. 108, that the attention of the Court was called to the claim of the attorney of the State Tax Collectors for 10 per cent. commissions upon all taxes, State, Levee, District and Parish due by the Bank as attorneys' fees for the defense of these suits, in accordance with Sections 56 and 57 of Act 106 of 1890, p. 120. These suits involve several years taxes against the capital and shares of stock and all the property of the Bank in the Parish of Orleans, and in each of the country parishes in the Eastern District of Louisiana, and also the property leased by the Masonic Grand Lodge.

Should your Honors decide all or any of these cases in favor of the State, 10 per cent. upon the aggregate amount of all these taxes should be assessed as part of the costs, and we respectfully ask your Honors so to decree.

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F. C. ZACHARIE,
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ALEX. PORTER MORSE,
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